CLERK'S COPY.

Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 536

SANTA CRUZ FRUIT PACKING COMPANY,
PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 29, 1937.

CERTIORARI GRANTED DECEMBER 6, 1937.

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No. 8432

United States

Circuit Court of Appeals

For the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

SANTA CRUZ FRUIT PACKING COMPANY,
a corporation,
Respondent.

Transcript of Record

In Two Volumes

VOL. I.

Pages 1 to 384

Upon Petition for the Enforcement of an Order of the National Labor Relations Board.

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United States of America Before the National Labor Relations Board.

Twentieth Region.

Case No. XX-C-1.

In the Matter of

SANTA CRUZ FRUIT PACKING COMPANY

and

WEIGHERS, WAREHOUSEMEN AND CEREAL WORKERS LOCAL 38-44 INTERNATIONAL LONGSHOREMEN'S ASSOCIATION.

CHARGE.

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned as business agent of the Weighers, Warehousemen and Cereal Workers Local 38-44 of the International Longshoremen's Association, and as the duly selected representative of the following men:

Name	Address
Ernie Reich	1839 70th Ave.
George Coste	1951 E. 24th St.
Iva Roche	1367 61st Ave.
E. G. Resburg	8815 D St.
Clifford Algrava	1951 E. 24th St.
Geo. M. Rose	1725 C. Seminary Ave.
Robert Anger	5810 Shattuck Ave.
Frank Phillips	5601 Hilton St.
Lester Scott	1456 56th Ave.
Pasqual Arieta	

Name	Address
Connie Martin	1780 Hayes St.
Alfred Pio	537 Lewis St.
Frank Granad	7101 Holliday Ave.
Rufus Hughes	4315½ Bond St.
Nick De Carlo	982 66th Ave.
Kenneth Toresen	2837 55th Ave.
Manuel Blanco	596 Estabrook St., San Leandro
Joe Pepitone	1121 27th Ave.
John Reckling	1839 71st Ave.
August Sannebeck	7123 Holly St.
Walter R. Bedford	982 66th Ave.
Fred Venturi	1630 61st Ave.
Joe Carmo	6109 E. Lawn St.
John Valin	635 Den St., Hayward
F. Ellis	2616 E. 11th St.
G. Olivera	1460 78th Ave.
L. H. Ledtke	1812 57th Ave.
Orville Gordon	1458 56th Ave.
Frank Freitas	1233 78th Ave.
Larry Doyle	1412 68th Ave.
Jack Baker	5811 East Lawn Ave.

members of the Weighers, Warehousemen, and Cereal Workers Local 38-44 of the International Longshoremen's Association, employed in the warehouse of the Santa Cruz Fruit Packing Company and constituting an overwhelming majority of the employees in that unit; hereby charges that the Santa Cruz Fruit Packing Company at 1175 57th Street in Oakland, Calif., has engaged in and is engaged in unfair labor practices within the mean-

ing of Section 8 of the National Labor Relations Act, in that:

I. The Santa Cruz Fruit Packing Company through its General Manager, Mr. E. E. Huddleson and others, has interfered with, intimidated, restrained, and coerced the aforementioned employees in the exercise of the rights guaranteed them in Section 7 of the National Labor Relations Act. These employees joined the Weighers, Warehousemen and Cereal Workers Local 38-44 of the International Longshoremen's Association, and chose this organization as their representative to bargain collectively for them, to engage in concerted activities and for other mutual aid and/or protection. On or about August 3, Mr. Huddleson in addressing a group of his warehouse employees intimidated them from joining the union and threatened to discharge them and put the work in the hands of a contractor. This action and sundry and divers other actions by the company, its agents and servants being directly in violation of Section 8, Paragraphs (1) and (3) of the National Labor Relations Act.

II. That on or about Wednesday, August 7, 1935, the aforementioned employees attended a meeting for the purpose of engaging in concerted activities and for mutual aid and/or protection, and that the Santa Cruz Fruit Packing Company, its agents and servants, had knowledge of the attendance of these employees at this meeting and of the purposes thereof, and that when the said employees reported for work at their appointed hours the employer prevented them from pursuing their normal occupa-

tions and otherwise discriminated against them solely because of and for the sole reason that they had attended the aforesaid meeting and [2] had engaged in other acts for their mutual aid and/or protection; that this condition still prevails and has been followed by many sundry and divers acts of violence committed by the employer, his agents and servants, with the sole purpose of intimidating, coercing and preventing the aforesaid complaining employees from pursuing their right to self-organization, to join a labor organization, and to engage in concerted activities for mutual aid and/or protection.

III. That, at sundry and divers times, demands and requests have been made that the Santa Cruz Packing Company bargain collectively with the duly selected representatives of the aforementioned employees in the warehouse of the company, as provided in Section 9 (a) of the National Labor Relations Act; and that said employer through his duly authorized agents has failed and refused to bargain collectively with the duly authorized representative of these employees, and has stated that he would have nothing to do with the Union in any negotiations of any kind, in direct violation of Section 8 Paragraph (5) of the National Labor Relations Act.

The undersigned further charges that such unfair labor practices are unfair labor practices effecting

commerce within the meaning of the National Labor Relations Act.

WEIGHERS, WAREHOUSEMEN AND CEREAL WORKERS, LOCAL 38-44 INTERNATIONAL LONGSHOREMEN'S ASSOCIATION.

By: E. C. WOODS.

Subscribed and sworn to before me this 27th day of September, 1935.

s/ R. G. WAGENET,
Regional Director N.L.R.B. 20th Dist. [3]

[Title of Court and Cause.]

COMPLAINT.

It having been charged by Weighers, Warehousemen and Cereal Workers Local 38-44, International Longshoremen's Association, 85 Clay Street, San Francisco, California, that the Santa Cruz Fruit Packing Company, 1175 57th Avenue, Oakland, California, hereinafter called the respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, approved July 5, 1935, the National Labor Relations Board, by the Regional Director for the Twentieth Region, as agent of the National Labor Relations Board designated by the National Labor Relations Board Rules and Regulations, Series 1, Article IV, Section 1, hereby alleges the following:

1. The respondent is and has been since February 6, 1914, a corporation organized under and existing by virtue of the laws of the State of California, having its principal office and place of business in the City of Oakland, County of Alameda, and State of California, and is now and has continuously been engaged at a place of business in the City of Oakland, County of Alameda, State of California, (hereinafter called the Oakland Plant) in canning, packing, warehousing and shipping fruits, vegetables and other products. [4]

2. The respondent, in the course and conduct of its business, causes and has continuously caused large quantities of fruits, vegetables and other products canned, packed, warehoused and shipped by it to be purchased in the State of California and other states of the United States and transported in intrastate and interstate commerce to the Oakland Plant in the State of California; and causes and has continuously caused large quantities of cans and other materials used by it in its canning and packing business to be purchased and transported in interstate commerce from and through states of the United States other than the State of California to the Oakland Plant in the State of California; and causes and has continuously caused the preponderant portion of the fruits, vegetables and other products canned, packed and warehoused by it to be sold and transported in interstate commerce from the Oakland Plant in the State of California to, into and through states of the United States other

than the State of California; and causes and has continuously caused large quantities of fruits, vegetables and other products purchased in the State of California and other states of the United States and owned by large national canners and distributors of canned fruit, vegetables and other products, to be canned, packed and warehoused at the Oakland Plant for and on behalf of said national canners and distributors of canned fruit, vegetables and other products; and causes and has continuously caused large quantities of fruit, vegetables and other products canned, packed and warehoused at the Oakland Plant for and on behalf of said national canners and distributors of canned fruit, vegetables and other products as aforesaid to be transported in interstate commerce from the Oakland Plant in the State of California to, into and through states of the United States other than the State of California, all of the aforesaid constituting a continuous flow of trade, traffic and commerce among the several states.

3. The respondent, by its officers and agents, on or about August 7, 1935, while engaged at the Oakland Plant as described above, [5] did refuse employment to and did discharge Ernie Reich, George Coste, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad, Rufus Hughes, Nick DeCarlo, Kenneth Toresen, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F.

Ellis, G. Olivera, L. H. Ledtke, Orville Gordon, Frank Freitas, Larry Doyle and Jack Baker, and each of them, all warehouse workers employed by the respondent at the Oakland Plant, and has at all times since on or about said date refused to reinstate said Ernie Reich, George Coste, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad, Rufus Hughes, Nick DeCarlo, Kenneth Toresen, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon, Frank Freitas, Larry Doyle and Jack Baker, and each of them.

4. The respondent, by its officers and agents, refused employment to, discharged and refuses to reinstate said Ernie Reich, George Coste, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad, Rufus Hughes, Nick DeCarlo, Kenneth Toresen, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon, Frank Freitas, Larry Doyle, and Jack Baker, and each of them, for the reason that said Ernie Reich, George Coste, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad, Rufus Hughes, Nick DeCarlo, Kenneth Toresen, Manual Blanco, Joe Pepitone, John Reck-

ling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon, Frank Freitas, Larry Doyle and [6] Jack Baker, and each of them, joined and assisted a labor organization known as Weighers, Warehousemen and Cereal Workers Local 38-44, International Longshoremen's Association, and engaged in concerted activities with other employees in the Oakland Plant for the purpose of collective bargaining and other mutual aid and protection.

5. The respondent, by its officers and agents, while engaged at the Oakland Plant as described above, on or about August 3, 1935, did urge, persuade and warn its employees at the Oakland Plant to refrain from becoming or remaining members of said Weighers, Warehousemen and Cereal Workers Local 38-44, and did threaten the said employees with discharge if they became or remained members thereof.

6. The respondent, by its officers, agents and employees, while engaged at the Oakland Plant as described above, from August 7, 1935, down to and including the date of the filing of this complaint, has, by many sundry and divers acts of intimidation and coercion, interfered with, restrained and coerced its said employees at the Oakland Plant from assisting said Weighers, Warehousemen and Cereal Workers Local 38-44, a labor organization of their own choice, and from engaging in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

7. By its refusal of employment to and its discharge of said Ernie Reich, George Coste, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad, Rufus Hughes, Nick DeCarlo, Kenneth Toresen, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon, Frank Freitas, Larry Doyle and Jack Baker, and each of them, and its refusal to reinstate said Ernie Reich, George Coste, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad, Rufus Hughes, Nick DeCarlo, Kenneth Toresen, Manuel Blanco, Joe Pepitone, [7] John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon, Frank Freitas, Larry Doyle and Jack Baker, and each of them; by urging, persuading and warning its employees at the Oakland Plant to refrain from becoming or remaining members of said Weighers, Warehousemen and Cereal Workers Local 38-44 and by threatening said employees with discharge if they became or remained members thereof; and by interfering with, restraining and coercing its employees as aforesaid, all as above set forth, and by all of said acts and each of them, the respondent did interfere with, restrain and coerce, and its interfering with, restraining and coercing

its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and by all of said acts and each of them, has thereby engaged in and is thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of said Act.

8. By its refusal of employment to and its discharge of said Ernie Reich, George Coste, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad, Rufus Hughes, Nick DeCarlo, Kenneth Toresen, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon, Frank Freitas, Larry Doyle and Jack Baker, and each of them, and its refusal to reinstate said Ernie Reich, George Coste, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad, Rufus Hughes, Nick De Carlo, Kenneth Toresen, Manuel Blanco, Joe Pepitone, John Reckling, August Sennebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon, Frank Freitas, Larry Doyle and Jack Baker, and each of them, as above set forth, the respondent did discriminate and is discriminating in regard [8] to the hire and tenure of employment of said Ernie Reich, George Coste, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger,

Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad, Rufus Hughes, Nick DeCarlo, Kenneth Toresen, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon, Frank Freitas, Larry Doyle and Jack Baker, and each of them, and did thus discourage and is thus discouraging membership in said Weighers, Warehousemen and Cereal Workers Local 38-44, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of said Act.

9. The aforesaid unfair labor practices occur in commerce among the several states, and on the basis of experience in the aforesaid Plant and others in the same and other industries, burden and obstruct such commerce and the free flow thereof, and have led and tend to lead to labor disputes burdening and obstructing such commerce and the free flow thereof.

10. The aforesaid acts of respondent set forth in paragraphs 3, 4, 5, 6, 7, 8 and 9 hereof constitute unfair labor practices affecting commerce within the meaning of Section 8, subdivision (1) and (3), and Section 2, subdivisions (6) and (7), of said Act.

Wherefore, the National Labor Relations Board, on the 2nd day of November, 1935, issues its complaint against the Santa Cruz Fruit Packing Company, respondent herein. [9]

NOTICE OF HEARING

Please take notice that on the 18th day of November, 1935, at 10:00 o'clock in the forenoon, at the Extra Sessions Court Room in the Alameda County Court House, Fifth and Broadway, Oakland, California, a hearing will be conducted before the National Labor Relations Board, by its agent, Henry Eickhoff, Jr., designated in accordance with said Rules and Regulations, Series I, Article IV, Section 3, and Article II, Section 22, on the allegations set forth in the complaint attached hereto, at which time and place you will have the right to appear, in person or otherwise, and give testimony.

You are further notified that you have the right to file with the Regional Director for the 20th Region, acting in this matter as the agent of the National Labor Relations Board, an answer to the complaint attached hereto, within five days from the date of service thereof.

Enclosed herewith for your information is a copy of Rules and Regulations, Series I, made and published by the National Labor Relations Board pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations.

In witness whereof, the National Labor Relations Board has caused this, its complaint and notice of hearing, to be signed by the Regional Director for the Twentieth Region on the 2nd day of November, 1935.

R. G. WAGENET,
Regional Director for the
Twentieth Region. [10]

[Title of Court and Cause.]

At a regular meeting of the National Labor Relations Board, held at its office in the City of Washington, D. C., on the 1st day of November, 1935.

Present: J. Warren Madden, Chairman; Edwin S. Smith.

ORDER DESIGNATING TRIAL EXAMINER

A charge having been filed in this matter, and it having appeared to the Regional Director of the 20th Region that a proceeding in respect thereto should be instituted, and the Board having considered the matter and being advised in the premises,

It is hereby ordered that Henry Eickhoff, Jr., act as Trial Examiner in the above case and perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations —Series 1 of the National Labor Relations Board.

By direction of the Board:

(s) BENEDICT WOLF,
Secretary. [11]

[Title of Court and Cause.]

ANSWER TO COMPLAINT

Comes now Santa Cruz Fruit Packing Company, a Corporation, hereinafter called the respondent, and answering the complaint filed herein by the National Labor Relations Board, by the Regional Director for the Twentieth Region, as agent for said Board, pursuant to a charge heretofore made against said Santa Cruz Fruit Packing Company by said Local 38-44, International Longshoremen's Association, admits, alleges and denies as follows:

I.

Admits that respondent is and has been since February 6, 1914, a corporation organized and existing under and by virtue of the laws of the State of California, and that said respondent now has its principal place of business and office in the City of Oakland, County of Alameda, State of California; and admits that respondent is now, and at all times in said complaint mentioned has been, engaged at a place of business located at 1175 Fifty-seventh Avenue in the City of Oakland, County of Alameda, State of California (hereinafter called the Oakland Plant), in canning, [12] packing, warehousing and selling fruits, vegetables and other products. Respondent denies that it is now, or at any time in said complaint mentioned has been engaged in shipping fruits, vegetables, or any other products whatsoever in interstate or foreign commerce, or at all, except the physical transportation of certain materials purchased or sold within the State of California to ultimate destinations also within the State of California and without such movement of such materials coming from or going beyond the territorial limits of said State at any time.

II.

Respondent admits that in the course and conduct of its business it purchases and has continuously purchased large quantities of fruits, vegetables and other products, canned, packed and warehoused by it, within the State of California, and denies that it causes or has continuously, or otherwise, caused any fruits, vegetables or other prod-

ucts whatsoever to be transported in interstate commerce to the Oakland Plant in the State of California, or to any other plant or place. Respondent further denies that it causes and/or has continuously, or otherwise, caused large or any quantities of cans and/or other materials used by it in its canning and packing business or for any other purpose to be purchased and/or transported in interstate commerce from and/or through states of the United States other than the State of California to the Oakland Plant in the State of California, or to any other plant or place, or in any manner whatsoever. Respondent further denies that it causes and has continuously, or otherwise, caused large or any quantities of fruits, vegetables and/or other products purchased in the State of California and/or other states of the United States and owned by large or any other national canners and distributors of canned fruit, vegetables and/or other products to be canned, packed and/or warehoused at the Oakland Plant for and on behalf of said national canners and distributors of canned fruit, vegetables and/or other products, and in this connection alleges that respondent is engaged in the canning and packing business in the State of California and is not engaged in shipping or transporting either raw materials or manufactured products in [13] interstate commerce, although the customers who purchase its manufactured products may distribute such purchases outside the State of California as well as within said state; denies that respondent causes and/or has continuously, or otherwise, caused large or any quantities of fruit, veg-

etables and/or other products canned, packed and/or warehoused at the Oakland Plant for and on behalf of said national canners and/or distributors, or for and on behalf of any one to be transported in interstate commerce, or at all, from the Oakland Plant or any other plant or place, to, into and/or through any state or states of the United States other than the State of California, and denies that all or any of the acts alleged in paragraph 2 of said complaint, or any other acts of said respondent constitute a continuous or other flow of trade, traffic and/or commerce among the several states.

III.

Respondent denies generally and specifically, each and every, all and singular the allegations contained in paragraph 3 of said complaint, and in this connection alleges that the men therein named failed and refused to work their regular shifts on said date and that other men were engaged to take their places in order that the business of respondent might continue without shut down or interruption which would have caused more than one thousand other employees to be without work; and in this connection further alleges that respondent has offered to re-employ certain of the said men who have not, since said date, engaged in acts of violence and coercion against the property and employees of respondent.

IV.

Respondent denies generally and specifically each and every, all and singular the allegations contained in paragraph 4 of said complaint.

V.

Respondent denies generally and specifically, each and every, all and singular the allegations contained in paragraph 5 of said complaint.

VI.

Respondent denies generally and specifically, each and every, all [14] and singular the allegations contained in paragraph 6 of said complaint, and in this connection alleges that said employees named in said complaint, together with officers, agents, pickets, and organizers of said Local 38-44, have, by many and divers acts of intimidation, coercion, and violence, attempted to interfere with, coerce and intimidate other employees of respondent, and have attempted to prevent the operation of the business of respondent by said means and acts.

VII.

Respondent denies generally and specifically, each and every, all and singular the allegations contained in paragraph 7 of said complaint, and alleges affirmatively that respondent has not done any act or thing in violation of any rights guaranteed in the National Labor Relations Act and has not engaged and is not now engaging in any unfair labor practices within the meaning of said act or otherwise.

VIII.

Respondent denies generally and specifically, each and every, all and singular the allegations contained in paragraph 8 of said complaint, and alleges affirmatively that respondent has not done any act or thing in violation of any rights guaranteed in

the National Labor Relations Act and has not engaged and is not now engaging in any unfair labor practices within the meaning of said act or otherwise.

IX.

Respondent denies that any of the acts alleged in said complaint or any acts of respondent occur or occurred in commerce among the several states, and deny that on the basis of experience in the aforesaid Plant and/or others or on any other basis in the same or other industries, said alleged acts or any of them burden and/or obstruct such commerce and/or the free flow thereof, and/or have led or tended to lead to labor disputes hindering and/or obstructing such commerce and/or the free flow thereof.

X.

Respondent denies that any of the acts alleged in said complaint, [15] or any other acts of respondent, constitute unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and/or (3), and/or Section 2, subdivisions (6) and/or (7) of said Act.

Wherefore, respondent prays that this proceeding be dismissed.

SANTA CRUZ FRUIT PACKING COMPANY,
a corporation.
By E. E. HUDDLESON [16]

State of California,
County of Alameda.—ss.

E. E. Huddleson, being first duly sworn, deposes and says:

That he is an officer, to-wit, the President of the Santa Cruz Fruit Packing Company, a Corporation, and that he makes this verification for and on behalf of said corporation;

That he has read the foregoing Answer to Complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein set forth upon information or belief, and as to those matters that he believes it to be true.

(Signed) E. E. HUDDLESON.

Subscribed and sworn to before me this 8th day of November, 1935.

[Seal] OLIVE A. BLEDSOE

Notary Public in and for the County of Alameda, State of California. [17]

[Title of Court and Cause.]

AMENDED COMPLAINT.

It having been charged by Weighers, Warehousemen and Cereal Workers Local 38-44, International Longshoremen's Association, 85 Clay Street, San Francisco, California, that the Santa Cruz Fruit Packing Company, 1175 57th Avenue, Oakland, California, hereinafter called the respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, approved July 5, 1935, the National Labor Relations Board, by the Regional Director for the Twentieth Region, as agent of the National Labor Relations Board

designated by the National Labor Relations Board Rules and Regulations, Series 1, Article IV, Section 1, said Regional Director having been duly authorized by the National Labor Relations Board, in accordance with Series 1, Article II, Section 7 of said Rules and Regulations, to issue this amended complaint, hereby alleges the following:

1. The respondent is and has been since February 6, 1914, a corporation organized under and existing by virtue of the laws of the State of California, having its principal office and place of business in the City of Oakland, County of Alameda, and State of [18] California, and is now and has continuously been engaged at a place of business in the City of Oakland, County of Alameda, State of California, (hereinafter called the Oakland Plant) in canning, packing, warehousing and shipping fruits, vegetables and other products.

2. The respondent, in the course and conduct of its business, causes and has continuously caused large quantities of fruits, vegetables and other products canned, packed, warehoused and shipped by it to be purchased in the State of California and other states of the United States and transported in intrastate and interstate commerce to the Oakland Plant in the State of California; and causes and has continuously caused large quantities of cans and other materials used by it in its canning and packing business to be purchased and transported in interstate commerce from and through states of the United States other than the State of California to the Oakland Plant in the State of California; and

causes and has continuously caused the preponderant portion of the fruits, vegetables and other products canned, packed and warehoused by it to be sold and transported in interstate commerce from the Oakland Plant in the State of California to, into and through states of the United States other than the State of California and to, into and through foreign countries; and causes and has continuously caused large quantities of fruits, vegetables and other products purchased in the State of California and other states of the United States and owned by large national canners and distributors of canned fruit, vegetables and other products, to be canned, packed and warehoused at the Oakland Plant for and on behalf of said national canners and distributors of canned fruit, vegtables and other products; and causes and has continuously caused large quantities of fruit, vegetables and other products canned, packed and warehoused at the Oakland Plant for and on behalf of said national canners and distributors of canned fruit, vegetables and other products as aforesaid [19] to be transported in interstate commerce from the Oakland Plant in the State of California to, into and through states of the United States other than the State of California and to, into and through foreign countries, all of the aforesaid constituting a continuous flow of trade, traffic and commerce among the several states and with foreign countries.

3. The respondent, by its officers and agents, on or about August 7, 1935, while engaged at the Oakland Plant as described above, did refuse employ-

ment to and did discharge Ernie Reich, George Coste, Iva Roche, E. G. Resburg, Clifford Algrava, Geo. M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad, Rufus Hughes, Nick DeCarlo, Kenneth Toresen, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon, Frank Freitas, Larry Doyle and Jack Baker, and each of them, all warehouse workers employed by the respondent at the Oakland Plant, and has at all times since on or about said date refused to reinstate said Ernie Reich, George Coste, Iva Roche, E. G. Resburg, Clifford Algrava, Geo. M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad, Rufus Hughes, Nick DeCarlo, Kenneth Toresen, Manuel Blanco, Joe Pepitone John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon, Frank Freitas, Larry Doyle and Jack Baker, and each of them.

4. The respondent, by its officers and agents, refused employment to, discharged and refuses to reinstate said Ernie Reich, George Coste, Iva Roche, E. G. Resburg, Clifford Algrava, Geo. M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie [20] Martin, Alfred Pio, Frank Granad, Rufus Hughes, Nick DeCarlo, Kenneth Toresen, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford,

Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon, Frank Freitas, Larry Doyle, and Jack Baker, and each of them, for the reason that said Ernie Reich, George Coste, Iva Roche, E. G. Resburg, Clifford Algrava, Geo. M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad, Rufus Hughes, Nick DeCarlo, Kenneth Toresen, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon, Frank Freitas, Larry Doyle and Jack Baker, and each of them, joined and assisted a labor organization known as Weighers, Warehousemen and Cereal Workers Local 38-44, International Longshoremen's Association, and engaged in concerted activities with other employees in the Oakland Plant for the purpose of collective bargaining and other mutual aid and protection.

5. The respondent, by its officers and agents, while engaged at the Oakland Plant as described above, on or about August 3, 1935, did urge, persuade and warn its employees at the Oakland Plant to refrain from becoming or remaining members of said Weighers, Warehousemen and Cereal Workers Local 38-44, and did threaten the said employees with discharge if they became or remained members thereof.

6. The respondent, by its officers, agents and employees, while engaged at the Oakland Plant as described above, from August 7, 1935, down to and

including the date of the filing of this complaint, has, by many sundry and divers acts of intimidation and coercion, interfered with, restrained and coerced its said employees at the Oakland Plant from assisting said Weighers, [21] Warehousemen and Cereal Workers Local 38-44, a labor organization of their own choice, and from engaging in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

7. By its refusal of employment to and its discharge of said Ernie Reich, George Coste, Iva Roche, E. G. Resburg, Clifford Algrava, Geo. M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad, Rufus Hughes, Nick DeCarlo, Kenneth Toresen, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon, Frank Freitas, Larry Doyle and Jack Baker and each of them, and its refusal to reinstate said Ernie Reich, George Coste, Iva Roche, E. G. Resburg, Clifford Algrava, Geo. M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad, Rufus Hughes, Nick DeCarlo, Kenneth Toresen, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon, Frank Freitas, Larry Doyle and Jack Baker, and each of them; by urging, pursuading and warning its employees at the Oakland Plant to refrain from be-

coming or remaining members of said Weighers, Warehousemen and Cereal Workers Local 38-44 and by threatening said employees with discharge if they become or remained members thereof; and by interfering with, restraining and coercing its employees as aforesaid, all as above set forth, and by all of said acts and each of them, the respondent did interfere with, restrain and coerce, and is interfering with, restraining and coercing its employees in the exercise of the [22] rights guaranteed in Section 7 of the National Labor Relations Act, and by all of said acts and each of them has thereby engaged in and is thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of said Act.

8. By its refusal of employment to and its discharge of said Ernie Reich, George Coste, Iva Roche, E. G. Resburg, Clifford Algrava, Geo. M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad, Rufus Hughes, Nick DeCarlo, Kenneth Toresen, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon, Frank Freitas, Larry Doyle and Jack Baker, and each of them, and its refusal to reinstate said Ernie Reich, George Coste, Iva Roche, E. G. Resburg, Clifford Algrava, Geo. M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad, Rufus Hughes, Nick DeCarlo, Kenneth Toresen, Manuel Blanco, Joe Pepitone, John

Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon, Frank Freitas, Larry Doyle and Jack Baker, and each of them, as above set forth, the respondent did discriminate and is discriminating in regard to the hire and tenure of employment of said Ernie Reich, George Coste, Iva Roche, E. G. Resburg, Clifford Algrava, Geo. M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad, Rufus Hughes, Nick DeCarlo, Kenneth Toresen, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, [23] L. H. Ledtke, Orville Gordon, Frank Freitas, Larry Doyle and Jack Baker, and each of them, and did thus discourage and is thus discouraging membership in said Weighers, Warehousemen and Cereal Workers Local 38-44, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of said Act.

9. The aforesaid unfair labor practices occur in commerce among the several states and with foreign countries, and on the basis of experience in the aforesaid Plant and others in the same and other industries, burden and obstruct such commerce and the free flow thereof, and have led and tend to lead to labor disputes burdening and obstructing such commerce and the free flow thereof.

10. The aforesaid acts of respondent set forth in paragraphs 3, 4, 5, 6, 7, 8 and 9 hereof consti-

tute unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7), of said Act.

Wherefore, the National Labor Relations Board, on the 14th day of November, 1935, issues its amended complaint against the Santa Cruz Fruit Packing Company, respondent herein.

NOTICE OF HEARING.

Please Take Notice that on the 9th day of December, 1935, at 10:00 o'clock in the forenoon, at the Extra Sessions Court Room in the Alameda County Court House, 5th and Broadway, Oakland, California, a hearing will be conducted before the National Labor Relations Board, by a Trial Examiner to be designated by it in accordance with its Rules and Regulations, Series I, Article IV, [24] Section 3, and Article II, Section 22, on the allegations set forth in the amended complaint attached hereto, at which time and place you will have the right to appear, in person or otherwise, and give testimony.

You are further notified that you have the right to file with the Regional Director for the Twentieth Region, acting in this matter as the agent of the National Labor Relations Board, an amended answer to the amended complaint attached hereto, within five days from the date of service thereof.

Enclosed herewith for your information is a copy of Rules and Regulations, Series I, made and published by the National Labor Relations Board pur-

suant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations.

In Witness Whereof, the National Labor Relations Board has caused this, its amended complaint and notice of hearing, to be signed by the Regional Director for the Twentieth Region on the 14th day of November, 1935.

(Signed) R. G. WAGENET,
Regional Director for the Twentieth Region. [25]

[Title of Court and Cause.]

At a regular meeting of the National Labor Relations Board, held at its office in the City of Washington, D. C., on the 17th day of December, 1935.

Present: J. Warren Madden, Chairman;
John M. Carmody;
Edwin S. Smith.

ORDER DESIGNATING TRIAL EXAMINER

A charge having been filed in this matter, and it having appeared to the Regional Director of the 20th Region that a proceeding in respect thereto should be instituted, and the Board having considered the matter and being advised in the premises,

It is hereby ordered that Roger J. Traynor act as Trial Examiner in the above case, in place and stead of Henry Eickhoff, Jr., and perform all the duties and exercise all the powers granted to trial

examiners under the Rules and Regulations—Series 1 of the National Labor Relations Board.

By direction of the Board:

(s) BENEDICT WOLF,
Secretary. [26]

[Title of Court and Cause.]

INTERMEDIATE REPORT

Upon charge duly made, and acting pursuant to authority granted in Section 10(b) of the National Labor Relations Act, approved July 5, 1935, the National Labor Relations Board, through R. G. Wagenet, Regional Director for the Twentieth Region, designated by the National Labor Relations Board Rules and Regulations, Series 1, Article IV, Section 1, issued its complaint dated November 2, 1935, and its amended complaint dated November 14, 1935, against Santa Cruz Fruit Packing Company, respondent herein. The complaint and notice of hearing thereon were duly served upon respondent on November 4, 1935, and the amended complaint and notice of hearing were duly served upon respondent on November 15, 1935, in accordance with said Rules and Regulations, Series 1, Article V, Section 1. The amended complaint alleged that the respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7) of the National Labor Relations Act, and preventing the exercise of rights guaranteed in Section 7 of that Act.

In summary, in respect of the unfair labor practices, the complaint stated:

1. The respondent, on or about August 7, 1935, by its officers and agents, discharged and refused to reinstate: Ernie Reich, George Costa, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank [27] Granad (Granada), Rufus Hughes, Nick DeCarlo, Kenneth Toreson, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon (Gardner), Frank Freitas, Larry Doyle, Jack Baker, the complainants in this case, all warehouse workers employed by the respondent at its Oakland plant, for the reason that they joined and assisted a labor organization, known as the Weighers, Warehousemen and Cereal Workers Local 38-44, International Longshoremen's Association, for purposes of collective bargaining, and other mutual aid and protection.

2. The respondent, by its officers, agents, and employees, urged, persuaded and warned its employees at the Oakland plant to refrain from becoming or remaining members of the aforementioned labor organization, threatened them with discharge if they became or remained members thereof, and otherwise restrained and coerced them from assisting it.

The discharges and the above acts are alleged to be unfair labor practices within the meaning

of Section 7, Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

Thereafter respondent filed its answer, dated November 8, 1935, to the complaint, which was stipulated to be an answer also to the amended complaint, denying the allegations of violation, denying that the acts alleged in the Board's amended complaint, or any other acts in the course and conduct of its business, occur or occurred in interstate and/or foreign commerce or constitute a continuous flow of interstate and/or foreign commerce, and denying that any of the acts alleged in said complaint, or any other acts of respondent, constitute unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3) or Section 2, subdivision (6) or (7) of said Act. Respondent's answer alleges that the men named in said complaint failed and refused to work their regular shifts on or about August 7th, 1935, and that other men were engaged to take their places in order that the business of respondent might continue without shut down or interruption and that the complainants and officials of the union attempted to prevent the operation of the business of respondent by committing various acts of intimidation and violence.

Pursuant to the notice of hearing, the undersigned, as agent of the [28] National Labor Relations Board designated by said Rules and Regulations, Series 1, Article IV, Section 3, and Article II, Section 22, conducted a hearing on December 23rd and December 24th, 1935, and January 2nd, Janu-

ary 3rd and January 6th, 1936, at Oakland, California. The respondent, appearing by Paul St. Sure and E. H. Moore, the Board, appearing by its Regional Attorney, Bertram Edises, and the Weighers, Warehousemen and Cereal Workers Local 38-44, appearing by Sam Kagel, participated in the hearing.

Before the introduction of testimony the respondent objected to the jurisdiction of the Board on constitutional grounds, and moved to dismiss on the grounds that the Act under which the complaint was brought is unconstitutional, and that the facts stated in the complaint were insufficient to furnish the basis of an action under the Act. The motion to dismiss was denied without prejudice. Counsel then stipulated that respondent's objections regarding the constitutionality of the Act and the jurisdiction of the Board should be deemed to extend to the entire proceeding and all evidence introduced therein. Full opportunity to be heard, to cross-examine witnesses and to produce evidence bearing upon the issues was afforded to all parties. Following the Board's presentation of its case, the respondent offered no testimony, but moved to dismiss on the grounds of its original motion, and the additional grounds that the evidence failed to support the allegations of the amended complaint, and was insufficient to support any findings in the premises, and that the evidence affirmatively established that the respondent is not engaged in interstate or foreign commerce. The undersigned reserved decision upon the motion and after due consideration

hereby denies said motion. In accordance with said Rules and Regulations, Series 1, Article II, Section 28, the respondent and the Board waived oral argument at the close of the hearing, but were afforded an opportunity to file written briefs, and thereafter briefs were filed by respondent and the Board.

Upon the record as thus made, the stenographic report of the hearing and all the evidence, including oral testimony, documentary and other evidence offered and received at the hearing the undersigned makes, in addition to the above, the following specific findings of fact:

1. The respondent is and has been since February 6, 1914, a corporation organized under and existing by virtue of the laws of the State of California, [29] having its principal office and place of business in the City of Oakland, County of Alameda, and State of California, and is now and has continuously been engaged at a place of business in the City of Oakland, County of Alameda, State of California (hereinafter called the Oakland Plant) in canning, packing, warehousing and shiping fruits, vegetables and other products.

2. The Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association, an affiliate of the American Federation of Labor, is a labor organization, organized and existing for the purpose, among other things, of negotiating with employers in regard to wages, hours and conditions of employment. Organization of the Santa Cruz plant started in July, 1935, the moving factor being "Bob" Anger, a Santa

Cruz warehouse employee. Anger succeeded in enlisting as members of the union all of the warehouse workers, with the exception of the foreman and the shipping clerk. All of the complainants were respondent's employees and were regularly employed at respondent's Oakland plant.

Complainants joined the union chiefly to secure higher wages and shorter hours. At the time they joined the union the wage rates for the men at the warehouse were 35 to 45 cents an hour. During the busy season (July to October) 10 to 14 working hours per day were not uncommon. The plant operated both a day shift and a night shift.

On Monday, August 5, 1935, at about 6:00 p. m., E. E. Huddleson, General Manager of the Santa Cruz Fruit Packing Company, summoned all the men from both the Santa Cruz and Stokely warehouses to a meeting, at which he stated that he had heard they had joined the union and wanted to know what they meant by it. He asserted that he had no objection to unions, but that he would not have a union in his plant, and made it clear to the men that if they persisted in their union affiliation he would let the work out to a contractor. He asked why they did not come to see him instead of joining the union and stated that competitive conditions would not permit his acceding to what he understood to be the union scale of 62½ cents per hour. He concluded by telling the men that he would give them a couple of days to think it over.

The men informed E. C. Woods, the Business Agent of the union, of this speech and on the day

following (Tuesday, August 6th) Woods went to [30] see Huddlson. At this interview Huddleson made it clear that the company would not tolerate union organization of its plant, informing Woods that if he persisted in organizing the warehousemen he would let the warehouse work out on contract.

On the same day (Tuesday, August 6th) the union officials sent to respondent a proposed agreement regarding terms of employment. The proposed agreement was in no sense an ultimatum, but a suggested basis for preliminary discussion. (See Board's Exhibit No. 4.)

The initiation of the coplainants into the union was scheduled for Wednesday, August 7th. On Wednesday morning Bob Anger requested and received permission from Stanley Toreson, the foreman of the warehouse, for both day and night shift men to get off from work in order to attend the meeting. There can be no doubt of Toreson's authority to grant this permission.

Toreson subsequently asked certain of the night men, Pio, Doyle and Sonnebach if they were going to the meeting. Upon receiving an affirmative reply he said he would arrange to have their work done in the interim and that they were to come back to work after the meeting. The Stokely men, who had completed their work on that day at 4:30 p. m., did not require special permission to get off at that time. Each complainant, therefore, either worked

his full shift or received permission from the company to quit work in order to attend the meeting.

When Ernie Reich, the assistant foreman, reported for work on the night shift at about 5:20 p. m., Toreson told him that "the old man gave us orders not to let anybody go to work that is going to the meeting." To Costa and Algrava, two night shift men who were there about the same time, however, he said merely that there would be no night shift that night.

The men's temporary absence while in attendance at the union meeting on Wednesday night caused no interference with operations at the plant. The day warehousemen had cleared the floor of cans for the day's run during the morning. Only one man was needed to trundle cans from the cannery to the warehouse. The small night crew on the pork and bean line had been informed by Toreson that he could fill their places for the duration of the meeting, provided they returned to work afterward. There were can stackers available [31] to take their places.

Reich said nothing about Toreson's remarks to him at the union meeting, and none of the other men had any warning that their getting off from work would affect their employment.

On Monday, August 5th, and Tuesday, August 6th, some of the men noticed one Manuel Gomez, a labor contractor, walking around the warehouse and inspecting its operations. Gomez was present again on Wednesday afternoon at about 2:30 p. m. At this time he had with him two Chinese. At about

5:20 p. m. on the same day Gomez brought in six or seven Chinese and negroes and put them to work in the warehouse. The time cards show that by 6:00 p. m. of the same day Gomez had thirteen of his men at work in the warehouse.

Pursuant to Toreson's instructions, Pio, Doyle and Sonneback returned for work after the meeting. They found a "couple" of guards, one of them armed, at the plant, and were refused admission by Toreson. Thursday morning the day men reported for work at the usual time, but found the gates locked and the premises guarded. Woods, the Business Agent of the union, learned of the lockout through a telephone call and came at once to the plant. Attempting to see Huddleson, he was informed that the latter was not in. He then succeeded in communicating with Gomez and asked him to put the men back to work. Gomez refused, stating that the men were on the street "because they belong to the union." The men thereafter formed a picket line, with orders from the union to confine their activities to peaceful persuasion. There is no evidence in the record of violence on the part of complainants or their fellow union members. Picketing activity was confined to "flagging" trucks and informing the drivers of the lockout, without physical interference with their passage into the plant.

All of the complainants testified that they would return to their jobs if permitted, and the union has on several occasions, commencing immediately after the lockout, requested the company to put

the men back to work. None of these requests have been granted by the company. On one occasion Huddleson offered to re-employ all but six men whom he alleged had been guilty of misconduct "when I have an opportunity to do so" and "when it is convenient to do so". This cannot be said to constitute an offer of reemployment. A [32] subsequent "offer" to reinstate the complainants was made "on condition that the organizers * * * stay away from them." (Board's Exhibit No. 20). This was not an offer of compliance with the National Labor Relations Act.

At no time did the respondent contend that the men were unsatisfactory as employees other than to allege that the men failed to work their regular shifts on or about August 7th, 1935. This allegation finds no support in the record.

The record clearly shows a premeditated design to lock out the men for the reason that they joined and assisted a labor organization known as Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association, and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection, and that the men were in fact locked out for this and for no other reason.

By said lockout and refusal to employ the complainants and each of them, respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act.

By said lockout and refusal to employ the complainants and each of them, respondent has discouraged membership in the labor organization known as Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association.

The allegations in the amended complaint of the unfair labor practices committed by respondent are fully supported by the facts.

3. The respondent cans annually approximately 1,699,270 cases of canned fruits and vegetables. Respondent annually ships and causes to be shipped and transported to foreign countries (almost entirely to the British Isles) 153,274 cases of said canned goods, of which approximately 119,288 cases were sold under C.I.F. sales contracts (Canners' League Form) and approximately 33,985 cases were sold under F.O.B. San Francisco Bay Points sales contracts (Canners' League Form). Respondent annually ships and causes to be shipped and transported to Boston, New York, Philadelphia, Chicago, Kansas City, Minneapolis, St. Paul, Detroit, Cincinnati, Sioux City, Marshalltown, in the states of Massachusetts, New York, Pennsylvania, Illinois, Missouri, Minnesota, Michigan, Ohio, Iowa and to other points in the United States out- [33] side the state of California 473,620 cases of said canned goods, said products being sold under F.O.B. San Francisco Bay Points sales contracts (Canners' League Form). Respondent annually ships and causes to be shipped and transported to points outside the state of California a total of approximately

626,894 cases of canned fruits and vegetables. The chief products so shipped and caused to be shipped and transported by respondent are peaches, pears, apricots, spinach and asparagus. Respondent is among the five largest fruit and vegetable canners in the state of California, employing during the "peak" packing season (June through September) from 1200 to 1500 persons. Employment in the cannery proper is largely seasonal in nature, but certain employees, including warehousemen, are retained in employment throughout the year.

Three methods of transportation, namely, water, rail and truck, are used in the shipment of respondent's products. Export shipments, the preponderant part of which are to the British Isles, go by water. The water route is likewise the chief method of carriage to points within the United States outside the State of California. About 20 per cent of respondent's products going outside the state is shipped by rail. A spur track connects respondent's plant with the main line of the Southern Pacific Railroad. The track is the property of respondent with a right of reversion in the railroad company. An undetermined amount of respondent's products is shipped by truck direct to destination including the cities of Portland, Oregon and Seattle, Washington.

There is a constant stream of loading and shipping at respondent's plant throughout the entire year. Approximately three to four thousand cases were loaded daily into the various vehicles, all such loading being a substantial and regular part of the

work of each of the complainants. In the case of the loading of freign cars and overland trucks, complainants placed said products directly upon the principal carrier. In the case of shipments by boat, complainants loaded the products onto trucks which then transported said goods to the docks. The goods customarily remained on said docks a few days pending reloading into vessels. Despite this temporary interruption such shipments constitute in essence one entire continuous operation. In all cases complainants actually started the product in course of transportation to its ultimate destination.

As a direct consequence of respondent's discriminatory lockout of [34] complainants the flow of respondent's products into the channels of interstate and foreign commerce was, during the period August 10th, 1935 to September 27th, 1935, materially burdened and obstructed. The movement of respondent's products by truck to vessels virtually ceased during this period.

The fruit and vegetable canning industry, in which respondent is engaged, is one of the most important industries in the western United States. By far the largest number of fruit and vegetable canners in the West are located in California. There are 130 canning concerns in this state, having total of 192 factories. (Board's Exhibit No. 15) In 1934 Western canneries produced 32,164,681 cases of canned fruits, having an estimated value of $115,-032,895 and 18,270,472 cases of canned vegetables, having an estimated value of $42,844,150. (Board's Exhibit No. 34, p. 30) Nearly half the fruit pack,

or 13,762,286 cases, and more than two-thirds of the vegetable pack, or 12,660,212 cases, were canned in the state of California. (Board's Exhibit No. 24) In 1934 the most important California canned fruit packs were as follows: Cling peaches 8,258,344 cases, Pears 2,662,842 cases, and Apricots 1,774,491 cases. The most important California canned vegetable packs in 1934 were: Tomatoes 3,289,920 cases, Spinach 1,993,456 cases, Asparagus 1,914,208 cases. (Board's Exhibit No. 24)

California leads the entire nation in number of wage earners employed in its fruit and vegetable canning and preserving industries. In 1933 a depression year, the average number of wage earners and salaried employees for the year was 25,709. (Board's Exhibit No. 28, pp. 2, 3) In 1933 a total of $16,645,000 was paid out by California fruit and vegetable canning and preserving plants in wages and salaries. (Board's Exhibit No. 28, p. 3) The fruit and vegetable canning and preserving industry being essentially a seasonal one, the number of workers employed during the peak period of approximately four months (July to October) would be several times the figure set out above.

About 85 per cent of the peaches, 85 per cent or more of the apricots, 85 per cent of the pears, 85 per cent or more of the spinach, and 85 per cent or more of the asparagus packed in California canneries are sold to out-of-state buyers and transported outside the state of California.

While figures for interstate movement are not available, export figures for the key fruit packs for 1933-1934 are as follows: [35]

BOARD'S EXHIBIT NO. 34

Product	Total Shipments (cases)	Exports (cases)	Percentage of shipments exported
Canned peaches	9,287,000	1,733,000	18%
" pears	4,584,000	1,381,000	39%
" apricots	2,572,000	538,000	20.9%

The greatest shipping center in the United States for canned fruits and vegetables is the San Francisco Bay area. (Board's Exhibit No. 25.) In 1933 73,983,226 pounds of peaches, of a declared value of $4,116,066, were exported from the entire United States. Of this quantity, 72,003,223 pounds, declared value $4,052,376, or approximately 97 per cent were declared at the San Francisco Custom House and passed through San Francisco Bay area ports. The importance of the San Francisco Bay area as an export center for canned fruits and vegetables is indicated in the following table:

BOARD'S EXHIBIT NO. 35

Product	Total 1933 Exports Entire U. S. and Declared Value of Same	1933 Exports From S. F. Bay Area and Declared Value of Same	Percentage of Total U. S. Exports
Canned peaches	73,983,226 pounds $4,116,066	72,003,223 pounds $4,052,376	97% approx.
Canned pears	70,748,912 pounds $4,358,874	41,162,349 pounds $2,661,854	58% "
Canned apricots	22,947,901 pounds $1,386,711	21,745,126 pounds $1,310,964	98% "
Canned asparagus	15,724,726 pounds $1,589,984	13,293,068 pounds $1,326,310	87% "
Canned tomatoes	3,166,051 pounds $181,583	1,880,425 pounds $103,379	60% "

(Board's Exhibit No. 25; see also Board's Exhibit No. 34 for statistics on spinach.)

The production of canned peaches, the most important western canned product, is concentrated almost entirely in California and is the most popular American canned fruit in foreign markets. (Board's Exhibits No. 34 and No. 35).

During 1934 and the first half of 1935 there were 15 strikes and lockouts in the canning and preserving industries of the United States. Eight of these strikes involved questions of union organization, including recognition and discrimination; 7,484 workers were involved in these stoppages, 2,581 of them in disputes over the above mentioned union issues; 67,597 man-days of them in disputes over the above mentioned issues; 67,597 man-days of potential productive activity was lost to the industry, 58,109 of them being in connection with [36] disputes over union organization matters.

CONCLUSIONS AND RECOMMENDATIONS

Upon the basis of the foregoing findings of fact, the undersigned hereby determines and concludes:

(1) Respondent, by discharging and refusing to employ Ernie Reich, George Costa, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad (Granada), Rufus Hughes, Nick DeCarlo, Kenneth Toreson, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon (Gardner), Frank Freitas, Larry Doyle, and Jack Baker, and by interfering with, restraining and coercing its empolyees in the exercise of the rights guaranteed

in Section 7 of the National Labor Relations Act, as set forth in the above findings of fact, has engaged and is engaging in an unfair labor practice affecting commerce within the meaning of Section 8, subdivision (1) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

(2) Respondent, by discharging and refusing to employ Ernie Reich, George Costa, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad (Granada), Rufus Hughes, Nick DeCarlo, Kenneth Toreson, Manual Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon (Gardner), Frank Freitas, Larry Doyle, and Jack Baker, and by discouraging membership in the labor organization known as Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association, as set forth in the above findings of fact, has engaged and is engaging in an unfair labor practice affecting commerce within the meaning of Section 8, subdivision (3) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

Wherefore the undersigned recommends that:

(1) Respondent cease and desist from interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through rep- [37] resentatives of their own choosing, and to engage in concerted

activities, for the purpose of collective bargaining or other mutual aid or protection, and from discouraging membership in any labor organization by discrimination in regard to tenure of employment or any term or condition of employment.

(2) In order to effectuate the policies of the Act respondent:

(a) offer immediate and full reinstatement to their former positions to Ernie Reich, George Costa, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad (Granada), Rufus Hughes, Nick DeCarlo, Kenneth Toreson, Manual Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon (Gardner), Frank Freitas, Larry Doyle and Jack Baker, the complainants herein, with all rights and privileges previously enjoyed;

(b) pay to each of said complainants a sum of money equal to that which he would normally have earned as wages during the period from August 10, 1935, when he was discharged, to the date of his reinstatement, computed at the wage rate which he was paid at the time of his discharge by respondent, less whatever sum he has earned subsequent to his discharge by respondent, such sums to be determined by agreement between the parties, or in the event such an agreement is not reached within five (5) days from the date of this report, through an accounting to be had before the undersigned not later than ten (10) days from the date

of this report at such time and place as the Regional Director for the Twentieth Region, National Labor Relations Board, shall designate, and after due notice by said Regional Director to the parties hereto;

(c) file with the Regional Director for the Twentieth Region, on or before February 13th, 1936, a report in writing setting forth in detail the manner and form in which it has complied with the foregoing requirements.

It is further recommended that unless within five (5) days respondent notifies said Regional Director in writing that he will comply with the foregoing recommendations the matter be referred forthwith to the National [38] Labor Relations Board and the Board issue an order requiring respondent to take the action aforesaid.

Signed at Berkeley, California, this 30th day of January, 1936.

/s/ ROGER JOHN TRAYNOR
Trial Examiner [39]

[Title of Court and Cause.]

EXCEPTIONS TO INTERMEDIATE REPORT AND TO PROCEEDINGS HERETOFORE HAD

Respondent Santa Cruz Fruit Packing Company hereby presents its exceptions to the record and Intermediate Report in the above entitled matter as required by Section 32 of Rules and Regulations, Series 1, National Labor Relations Board.

The filing of these exceptions shall not be deemed to constitute a waiver of any rights, whether legal or equitable, of respondent in the premises and shall not be deemed to constitute any admission on the part of respondent that said National Labor Relations Board has jurisdiction of the matter in controversy or that the National Labor Relations Act is constitutional or valid, but these exceptions are filed for the sole purpose of protecting and preserving the rights, if any, of respondent in the premises, particularly in view of the provisions of Section 33 of said Rules and Regulations, Series 1, which provide, among other things, that a failure to file a statement of exceptions shall operate as submission of the case to the Board on the record and the report.

Respondent specifically reserves and claims the right to proceed by a Bill of Complaint in Equity or otherwise to prevent and restrain further proceedings in the premises by said National Labor Relations Board and does not intend, by the filing of these exceptions, to submit to the alleged jurisdiction of said Board in any particular. [40]

EXCEPTION NO. I.

Before the introduction of testimony at the hearing had in the premises, respondent objected to the jurisdiction of the Board on constitutional grounds and moved to dismiss complaint on the grounds that the Act under which the complaint is made is unconstitutional and the further grounds that the facts stated in the complaint were insufficient to

furnish the basis of any action under the Act. This motion to dismiss was denied by the Trial Examiner, and the respondent hereby excepts to the said denial of said motion and specifies such denial as "Exception No. I."

EXCEPTION NO. II.

Respondent at said hearing objected to the introduction of any and all testimony by complainants on the ground that the Board was without jurisdiction and on the grounds that the Act under which the complaint was brought is unconstitutional, but said objection to the admission of said testimony was overruled by the Trial Examiner. Respondent excepts to such ruling and specifies the overruling of said objections as "Exception No. II."

EXCEPTION NO. III.

At the conclusion of the presentation of the Board's case, respondent moved to dismiss the complaint and all proceedings thereunder on the following grounds:

First: That said complaint does not state facts sufficient to constitute a cause of action or basis for complaint;

Second: That the National Labor Relations Board and the Regional Board, and each of them, are without jurisdiction to hear the issues raised by the complaint and answer on file herein, and are without jurisdiction to proceed in the premises;

Third: That the National Labor Relations Act, approved July 5, 1935, violates the terms and provi-

sions of the Constitution of the United States and particularly Section 8 of Article One thereof and the Fifth Amendment thereto, and that said Act is inherently invalid. [41]

Fourth: That the evidence adduced at the hearing herein is insufficient to support all or any of the material allegations contained in said complaint and is insufficient to support any findings in the premises;

Fifth: That the evidence affirmatively establishes that the Respondent is not engaged in interstate or foreign commerce.

Said motion to dismiss was denied by the Trial Examiner and respondent excepts to denial of said motion and specifies such denial of said motion as "Exception No. III."

EXCEPTION NO. IV.

Respondent takes exception to each and every, all and singular the findings of fact set forth in the Trial Examiner's Intermediate Report, for the reason that the testimony introduced and received at said hearing, does not support said findings or any of them. Wherefore, respondent excepts to said findings and each of them. *Wherefore, respondent excepts to said findings and each of them* as "Exception No. IV."

EXCEPTION NO. V.

Respondent further specifically excepts to the conclusions contained in the findings to the effect that the allegations in the amended complaint relating to unfair labor practices committed by re-

spondent are fully supported by the facts and excepts to said finding for the reason that the evidence introduced is insufficient to support said finding and specifies this "Exception No. V."

EXCEPTION NO. VI.

Respondent specifically excepts to the finding that as a direct consequence of respondent's alleged discriminatory lockout of complainants the flow of respondent's products into the channels of interstate and foreign commerce was materially burdened and obstructed, and bases said exception on the grounds that there is no evidence to support such finding and specifies such exception as "Exception No. VI." [42]

EXCEPTION NO. VII.

Respondent takes exception to the conclusions and recommendations contained in said Intermediate Report for the reasons that said conclusions and recommendations are not supported by any testimony and are against law, and respondent specifies said exception as "Exception No. VII."

EXCEPTION NO. VIII.

Respondents specifically takes exception to each and every, all and singular the recommendations contained in said Intermediate Report for the reason that there is no authority and law for the making of the orders, for the doing of the acts referred to in said recommendations and specifies said Exception as "Exception No. VIII."

EXCEPTION NO. IX.

Respondent excepts to the record, the Intermediate Report, and any and all proceedings had and contemplated in the premises for the reason that the National Labor Relations Act is unconstitutional, illegal and wholly void and particularly as applied to complainant and complainant's business is unconstitutional, illegal and wholly void in the following respects, among others:

(1) Said Act cannot be sustained under the Commerce Clause contained in Section Eight of Article I of the Constitution of the United States since it seeks to regulate matters concerning the wholly intrastate business of complainant, as herein set forth, a regulation which does not constitute the regulation of commerce among the several States or with foreign nations.

(2) Said Act is violative of the Tenth Amendment to the Constitution of the United States, in that it constitutes an invasion by the Federal Government of fields of regulation reserved by that Amendment to the States or to the People, because said Act is in purpose, in essence and on its face an attempt to regulate matters not committed to the Federal Government by the Constitution of the United States, in that it attempts to regulate local industry, including the relations between employers, including complainant, and their employees in respect to rates of pay, wages, hours of employment and other conditions of employment. [43]

(3) Said Act is violative of the Fifth Amendment to the Constitution of the United States in that:

(a) it attempts to deprive complainant without due process of law of the liberty guaranteed to it by that amendment;

(b) it attempts to deprive complainant without due process of law of its property rights, including the right to deal freely and independently with its employees, or any of them, or any group thereof, in respect to rates of pay, wages, hours of employment and other conditions of employment;

(c) it attempts to take the private property of complainant for a public use without the payment of just compensation;

(d) it is wholly unreasonable, arbitrary and capricious.

(4) Said Act is violative of the Fourth Amendment to the Constitution of the United States in that it permits and authorizes unreasonable searches and seizures of papers and effects of employers, including complainant, and deprives employers, including complainant, of the right to be secure in their papers and effects.

(5) Said Act is violative of the Third Article to the Constitution of the United States in that it purports to invest judicial power of the United States in large part in the National Labor Relations Board and not in the courts as required by said Article, and said Act thereby purports to infringe upon a field of constitutional authority of the courts of the United States.

(6) Said Act is violative of the Seventh Amendment to the Constitution of the United States in

that no trial by jury is permitted or required by said Act.

And respondent specifies this exception as "Exception No. IX."

/s/ DECOTO and ST. SURE
Attorneys for Santa Cruz Fruit Packing Company, a corporation. [44]

United States of America Before the National Labor Relations Board.
Case No. C-51.

In the Matter of

SANTA CRUZ FRUIT PACKING COMPANY, a Corporation,

and

WEIGHERS, WAREHOUSEMEN AND CEREAL WORKERS, LOCAL 38-44, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION.

DECISION

STATEMENT OF CASE

On September 27, 1935, Weighers, Warehousemen and Cereal Workers Local 38-44, hereinafter referred to as the union, filed with the Regional Director for the Twentieth Region a charge that the Santa Cruz Fruit Packing Company, of Oakland, California, hereinafter called respondent, had

engaged and was engaging in unfair labor practices forbidden by the National Labor Relations Act, approved July 5, 1935, hereinafter referred to as the Act. On November 2, 1935, the Board issued its complaint against respondent. The complaint was signed by the Regional Director for the Twentieth Region and alleged that respondent had committed unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3) and Section 2, subdivisions (6) and (7) of the Act. In respect to the unfair labor practices the complaint alleged in substance:

(1) Respondent, on or about August 7, 1935, discharged and thereafter regused to resinstate: Ernie Reich, George Costa, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad (Granada), Rufus Hughes, Nick De Carlo, Kenneth Torenson, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon (Gardner), Frank Freitas, Larry Doyle, Jack Baker, warehouse workers employed by the respondent at its Oakland plant, because they had joined and assisted the union.

(2) Respondent urged, persuaded and warned its warehouse employees at the Oakland plant to refrain from becoming or remaining members of the union, threatened them with discharge if they became or remained members thereof, and otherwise restrained and coerced them from assisting it.

The complaint and accompanying notice of hearing were served on respondent in accordance with Article V of the National Labor Relations Board Rules and Regulations—Series 1. On November 8, 1935, respondent filed its answer to the complaint denying the allegations of violation, denying that the acts alleged in the Board's complaint, or any other acts in the course and conduct of its business, occur or occurred in interstate and/or foreign commerce or constitute a continuous flow of interstate and/or foreign commerce, and denying that any of the acts alleged in the complaint, or any other acts of [45] respondent, constitute unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3) and of Section 2, subdivisions (6) and (7) of the Act. Respondent's answer alleged that the men named in the complaint failed and refused to work their regular shift on or about August 7, 1935 and that other men were engaged to take their places in order that the business of respondent might continue without interruption. Respondent also alleged that it had offered to re-employ all the men named in the complaint except those who had committed various acts of intimidation and violence since the inception of the dispute.

On November 14, 1935, the Board issued its amended complaint alleging that respondent is engaged in foreign as well as interstate commerce. It was stipulated at the hearing that respondent's answer would apply to the complaint as so amended.

Pursuant to notice, a hearing was conducted by Roger John Traynor, the duly designated Trial Examiner, on December 23 and December 24, 1935, January 2, January 3 and January 6, 1936, at Oakland, California. Respondent, appearing by Paul St. Sure and E. A. Moore, the Board, appearing by its Regional Attorney, Bertram Edises, and the union, appearing by Sam Kagel, participated in the hearing. Full opportunity to be heard, cross-examine witnesses and to produce evidence bearing upon the issues was afforded to all parties.

Before the introduction of testimony respondent objected to the jurisdiction of the Board on constitutional grounds, and moved to dismiss on the further ground that the facts stated in the complaint were insufficient to furnish the basis of an action under the Act. The motion to dismiss was denied without prejudice. Counsel then stipulated that respondent's objections to the constitutionality of the Act and the sufficiency of the complaint should be deemed to extend to the entire proceeding and all evidence introduced therein. Following the Board's presentation of its case respondent offered no testimony, but moved to dismiss on the grounds of its original motion, and on the additional grounds that the evidence failed to support the allegations of the complaint, that it was insufficient to support any findings in the premises, and that the evidence affirmatively established that respondent is not engaged in interstate or foreign commerce. The Trial Examiner denied this motion.

Respondent and the Board waived oral argument at the close of the hearing, but briefs were filed by respondent and the Board.

Upon the record thus made, the stenographic report of the hearing and all the evidence, including oral testimony, documentary and other evidence offered and received at the hearing, the Trial Examiner, on January 30, 1935, filed an intermediate report, finding in substance that respondent is engaged in interstate and foreign commerce; that respondent had committed unfair labor practices in violation of Section 8, subdivisions (1) and (3) of the Act in interfering with its employees' membership in the union, by discharging them for union activities and by refusing to reinstate all the warehousemen named in the complaint; and that such unfair labor practices constitute unfair labor practices affecting commerce within the meaning of Section 2, subdivisions (6) and (7) of the Act. The Trial Examiner recommended that respondent cease and desist from interfering with the union activities of its employees and that it immediately reinstate all the men named in the complaint with all privileges previously enjoyed and with back pay.

We find that the evidence supports the Trial Examiner's rulings, findings and conclusions. Nothing in respondent's exceptions to the intermediate report, which are discussed below, requires any material alteration of such findings and conclusions. [46]

Upon the record in this case, the stenographic report of the hearing and all the evidence, including oral testimony, documentary and other evidence offered and received at the hearing, the Board makes the following:

FINDINGS OF FACT

1. The Santa Cruz Fruit Packing Company and its Relation to Stokely Bros.

(a) The Santa Cruz Fruit Packing Company

The Santa Cruz Fruit Packing Company is a California corporation which is among the four or five largest fruit and vegetable canning concerns in the state. It operates two canneries, one at Oakland, California, and one at Seabright, near Santa Cruz, California.

Respondent is engaged at the Oakland plant, where the present dispute arose, in canning, packing, warehousing and shipping fruits, vegetables and agricultural commodities, the bulk of which are grown in California. Tomatoes, and tomato products, peaches, apricots, spinach, pears, asparagus, and pork and beans, are, in the order named, the principal products canned and sold by respondents.

During 1935 the total pack of respondent amounted to approximately 1,699,270 cases of canned fruits and vegetables. This figure includes approximately 105,814 cases carried over from 1934. Of the 9.02% of the total pack shipped to foreign countries, 7.02% was sold under C. I. F. sales contracts (Canners' League Form) and 2% was sold under

F. O. B. San Francisco Bay Points sales contracts (Canners' League Form). Approximately 473,620 cases of canned goods were sent to the States of New York, Illinois, Kansas, Missouri, Minnesota, Michigan, Ohio, Iowa, Massachusetts, Pennsylvania, and to other points in the United States outside the State of California, under F. O. B. San Francisco Bay Points sales contracts (Canners' League Form). Goods thus transported to states outside California comprised about 27.87% of the total pack. 11.78% of the pack remained unsold in December, 1935. Respondent thus shipped approximately 36.89% of its total pack, outside of California in 1935. Peaches, pears, apricots, spinach and asparagus are the chief products so shipped.

The three methods of transportation used by respondent are water, rail and truck. Export shipments, the preponderant portion of which are sent to the British Isles, go by water. The water route is also the chief method of carriage to points within the United States outside the State of California. Approximately 20 per cent of respondent's products going to other states is shipped by rail. An undetermined amount of respondent's products is shipped by truck directly to the point of destination.

There is a constant stream of loading and shipping of products out of respondent's plant throughout the entire year. Approximately three to four thousand cases are loaded daily into the various vehicles of conveyance. All such loading is a substantial and regular part of the work of the ware-

housemen here involved. Where the shipments are by rail or overland trucks, the men load directly into the principal carriers. Where the shipments are by boat, the work of respondent's warehousemen consists of loading the products onto the trucks which transport the goods to the docks. The men here involved thus actually start all the products of respondent upon the course of transportation to their ultimate destination.

All of the aforesaid constitutes a continuous flow of trade, traffic and commerce among the several States and with foreign countries. The warehousemen here involved are engaged in operations in the course and conduct of such commerce and are an integral part of such commerce. [47]

(b) Stokely Bros.

Stokely Bros. is an Indiana corporation owning a warehouse across the street from respondent's plant and is respondent's principal customer. Stokely's warehouse labor is managed and supervised by Huddleson, the general manager of respondent, Williams, respondent's assistant general manager and Remington, respondent's supreintendent. These officers are paid by respondent; Morris, the foreman at Stokely, and Frates, the assistant foreman, are alone paid by Stokely Bros. All the warehousemen at the Stokely warehouse are paid by Santa Cruz with its own checks.

II. The Unfair Labor Practices

(a) The Lockout

Employment at respondent's plant during the "peak" season (which is June through September) ranges from 1200 to 1500 persons, of whom approximately thirty are warehousemen. Employment in the cannery proper is largely seasonal in nature, but certain employees, including the warehousemen, are retained in employment throughout the year. The warehousemen receive from 35 to 40 cents an hour, and in the busy season sometimes work 14 to 17 hours a day.

Weighers, Warehousemen and Cereal Workers Local 38-44, International Longshoremen's Association, is a labor organization affiliated with the American Federation of Labor and existing for the purpose of negotiating with employers with respect to wages, rates of pay, hours of employment, and conditions of work. Organization of the Oakland plant started in July 1935 through the initiative of "Bob" Anger, a warehouseman at respondent's plant and a former union man. Anger had approached the union and been told that the Santa Cruz men would be taken in if a sufficient number made application. By the end of July all of the permanent warehousemen of respondent except the foremen and straw bosses had made formal application for membership. Organization work was not done during working hours and the fact of union affiliation was not made known to respondent until

Monday, August 5th, when the men began to wear their union buttons.

Late in the day on that Monday, Huddleson, the general manager of respondent, did the unprecedented thing of calling all the warehousemen together for a meeting. He there announced that he had heard that the men had joined a union; that he understood the union rate to be 62½ cents an hour; that he could not permit a union in his plant because of competitive conditions; and that if they wanted higher wages they should have approached him without joining a union. He added that no one from the outside would tell him how to run his business; that he could have the work contracted out for less than he was then paying, and that the men could either go with the union or with him. He gave them "a couple of days to think it over". One of the warehousemen, in testifying to the inference drawn by the men from this speech, said that they gathered that "they could either throw away their union buttons or get fired".

The presence in the plant of Gomez, a labor contractor who had been seen inspecting the Santa Cruz and Stokely warehouses during the same day, indicates that Huddleson had already begun preparations to carry out his threat. On the following day Morris, foreman at the Stokely warehouse, pointed Gomez out to one of the warehousemen and said "that is the guy that is going to take over the contract".

Woods, the business agent of the union, who was notified by the men of Huddleson's ultimatum interviewed Huddleson on Tuesday, August 6. By that time Huddleson had received a draft copy of the standard contract which the union had negotiated with other large California canning firms for warehousing work, [48] embodying suggested terms of employment. The letter accompanying the tentative draft stated, "We desire that you give this proposal serious consideration and we are prepared to meet with you within the next few days for the purpose of discussing and arriving at a solution of an agreement." In his conversation with Woods, Huddleson recapitulated his position in substantially the same unequivocal terms saying that he "didn't want anything to do with a union or any of its officials * * *;" that "you couldn't have union activities around the place—it would cost too much money * * *; * * * Canneries were no place for a union—the hours wouldn't permit it and the wages wouldn't permit it * * *; * * * if they wanted to organize they could go somewhere else * * *" Upon his reiteration of the threat that he would turn the warehouse over to a contractor if the union came in, Woods requested the name of the contractor so that he could deal with him, but Huddleson declined to furnish the information and refused to state the reason.

The union meeting at which the men were to be initiated was to be held at eight o'clock Wednesday night, August 7th. At eight-thirty Wednesday

morning Anger requested Torenson, the Santa Cruz foreman, for permission for the day shift men to leave their work at four-thirty in order to attend the meeting. This ample period was necessary because most of the men lived a considerable distance from the plant and the union hall, and wished to go home to prepare for their initiation. Torenson thanked Anger for notifying him, saying "that would give him a change to arrange his work". At about noon Anger made the same request in respect to the night shift men and received the same answer. Hughes who was working near Anger at the time, testified that he overheard these conversations; Pepitone, another worker, also confirmed Anger's account; Rose and Resburg, day warehousemen, agreed that they saw Anger speaking to Torenson and were shortly thereafter told by Anger that Torenson had raised no objection to their leaving at four-thirty that evening. Early in the day after his encounter with Anger, Torenson asked Pio, Doyle and Sonnebeck (night men employed on the pork and bean line) if they were going to the meeting, and when they replied that they were, said that he would arrange to have them replaced in the meantime. He specifically stated that they were to return to work that night at the conclusion of the meeting.

During the afternoon a rumor spread through the plant that any of the men who went to the meeting would be discharged. In response to Anger's inquiry Torenson denied having made any such statement. Hughes confirms Anger's account of this exchange with the testimony that Torenson said that "Huddleson had told him to issue no order to the effect

that anyone going to the meeting would be discharged". In spite of Torenson's denial, however, further evidence of the fact that respondent had already formulated the design to lock the men out if they persisted in their union activities is found in the statement of Morris to one of the warehousemen, who replied in the negative to an inquiry as to whether he had a union button. Morris remarked, "Well, you are playing safe that way." He then added, "if you want to go on stacking cans you'll have to ask Gomez".

At four-thirty, when the men went to turn in their time cards, Torensen could not be found. They nevertheless departed, after leaving their cards on his desk. Although this was unusual, there is evidence that the men had left under these conditions before.

That evening *which* Reich, the assistant foreman in charge of the night shift, arrived at the plant at about five-twenty, Gomez was already in [49] the office and six or seven men from his crew were in the warehouse.* On discovering that Reich too was going to the meeting, Torenson observed "The old man gave us orders not to let anybody go to work who is going to that meeting."† However, Costa and

*Thirteen of Gomez's men punched in by six o'clock Wednesday night.

†Although Reich then went to the meeting he did not repeat Torenson's statement to the men. There is no evidence that Reich was instructed to inform them that their leave had been rescinded, and his silence is plausibly explained by the fact that, since Gomez was already in the warehouse a warning would have been of no avail.

Algrava, two other night shift men who were at the plant at about the same time, were merely told by Torensen that there was to be no night shift that day. When Algrava replied "Good, I want to go to the meeting anyway", Torenson made no comment. The testimony of Woods, business agent of the union, that the men at the meeting considered themselves absent from work with respondent's permission is borne out by the fact that the pork and bean gang returned to work that same night pursuant to Torensen's instructions, while the day crew reported at the usual hour the following morning.

The orderly procedure pursued by respondent's warehousemen in availing themselves of their legal right to organize contrasts vividly with the deliberately provocative tactics of respondent. In spite of the fact that the men had been instructed by Torenson to go to work immediately after the union initiation was concluded, respondent threw a cordon of guards armed with sawed-off shot-guns around the plant to confront its warehousemen on their return. When the pork and bean crew appeared at the warehouse about ten-thirty Wednesday night, they were met by guards with significantly exposed guns and the threat "We are going to have trouble around there. You had better go home." In reply to their protest that he had told them to return after the union initiation, Torensen said "I can't help it; that is orders". On Thursday morning the

day crew found the gates of the plant locked and the premises similarly guarded. One of the men who found his way in, was asked whether he had a "button", and when he responded that he had, was ejected by a Gomez guard. All of the warehousemen who had joined the union were thus locked out.

Respondent's contention that the men left the plant without permission, thus forcing Huddleson to take on a new force to complete the work, finds no support in the record. The testimony of the Santa Cruz men that Torenson gave them leave to go at four-thirty on Wednesday stands uncontradicted. Nothing appears in the record to offset the abundant evidence of Torensen's authority. The transparency of respondent's claim in this connection is sharply exposed by the fact that Orville Gardner, who on Tuesday had personally received Torenson's permission to take leave on Wednesday night merely because work was slack, was excluded from the plant with the others on Thursday. Respondent's contention lacks even the color of plausibility when applied to the men at the Stokely warehouse since they had completed their assignments at four-thirty. Respondent's contention advanced somewhat diffidently that the men struck, hardly merits consideration, so replete is the record with evidence that the men took all reasonable precautions to safeguard their jobs.

Respondent has interposed no claim that the men were generally inefficient; Huddleson, on the con-

trary, repeatedly asserted in his speech on Monday and in the course of the various negotiations following the lockout that their work was entirely satisfactory and offered to take them back if [50] they abandoned their union activities. In addition, the men's temporary absence while at the meeting on Wednesday night involved no disturbance in the operations at the plant. The day warehousemen had cleared the floor of cans for the day's run during the morning. Only one man was needed to trundle cans from the cannery to the warehouse and can stackers were available to take the place of the small night crew on the pork and bean line.

(b) The Union's Attempts to Secure Reinstatement of the Men.

Immediately after the lockout occurred, the union made at least four systematic attempts to have the men reinstated, under conditions similar to those which existed before the dispute began. Huddleson's and Gomez's reactions to the union's overtures indicate conclusively that the tactics of respondent were prompted originally by a determination to break the union and that Huddleson's offers of reinstatement were limited by the same design.

On Thursday morning, August 8th, after all of the men had been locked out, Woods attempted to see Huddleson. Huddleson could not be found, but Woods was told by Gomez that the union was the reason for the lockout of the men. Gomez unquali-

fiedly rejected Woods' suggestion that he employ the men himself. Several days later Anger and Woods again approached Huddleson but were categorically informed that he would never have anything to do with the union. At a subsequent conference between Woods, Huddleson and Jackson (of the Oakland Teamster's Union) Huddleson again revealed his anti-union bias by declining to reinstate the men on the ground that if he took them back the union might again make attempts to negotiate with him. Huddleson's refusal to reinstate the men at a later meeting with Woods, Jackson and Bridges (president of local 38-79 I. L. A.) was also explicitly based upon the fact that the union might reopen the question of wages and working conditions after the men had returned to work.

Respondent's "offers of reinstatement" were consistently vitiated by vagueness and arbitrariness as well as the imposition of conditions requiring complete capitulation by the union. Thus, Huddleson at one point asserted that he would re-employ all but six of the men who were out but when pressed for a more specific commitment as to the time of reinstatement, countered with the statements "when I have an opportunity to do so" and "when it is convenient to do so". The six men whom his "offer" did not cover were, he maintained, disqualified for reinstatement by their "disorderly conduct" after the lockout. The union's offer to arbitrate their

cases was categorically rejected.* In a letter to Mr. Real and Mr. Spooner (of the Central Labor Council of Alameda County) written August 31, 1935, Huddleson again offered to reinstate all but six of the men, with the same limitation: "we will reinstate the balance of these men . . . with the understanding that the organizers . . . will stay away from them and leave them alone . . ."

(c) Status of the Men at the Stokely Warehouse as Employees of Respondent.

Paragraph 3 of respondent's answer admits by implication the allegation in paragraph 3 of the Board's complaint that all of the warehousemen here involved are employees of respondent. In its brief, filed after the conclusion of the hearing, respondent for the first time raised the objection that "a few . . . of the complainants . . . were employees of Stokely Bros. . . . whose warehouse employees were paid by respondent's check and respondent was [51] reimbursed therefor each week by Stokely Bros." The particular warehousemen adverted to are not named in respondent's brief or in any evidence put in by respondent.

It is clear from the record, that respondent habitually, and sometimes daily, detailed its ware-

*While the answer alleges the violence of several of the men, respondent does not name them and no evidence appears in the record through which they can be identified. It is therefore unnecessary to discuss the bearing of violence committed by employees during the dispute upon the question of reinstatement.

housemen to Stokely when work at respondent's plant was slack, and that when Santa Cruz required additional hands the process was reversed. Thus, practically all of the men involved in the present inquiry had at some time worked at Stokely; Reich testified that the arrangement of the transfers was part of his ordinary duties as assistant foreman at respondent's plant. Gerald Olivera, Walter R. Bedford, John Valin, Fred Venturi and F. Ellis had worked principally at Stokely; we therefore infer that respondent's objection alludes to them.

Testimony introduced at the hearing establishes beyond dispute the fact that the five warehousemen in question were employees of respondent, and were so regarded by its chief officers and agents, although the preponderant portion of their activities were in the Stokely plant. Thus, Williams, assistant general manager of respondent, when questioned as to the number of respondent's employees, included these five warehousemen in his reply. The warehousemen at both the Santa Cruz and Stokely plants always received identical Santa Cruz checks. Williams admitted that Remington, the general superintendent of respondent, was in charge of employment at both the Stokely and Santa Cruz warehouses; that Morris, the foreman at Stokely who did the hiring and discharging, was under Remington's direct supervision; and that for all practical purposes the warehouse labor of both plants was run as a unit. This description of the unified management of the labor in both warehouses is unmistakably borne out by Huddleson's behavior in reference to the ware-

housemen at Stokely. On August 5th, the day on which Huddleson called the men together for his speech, Morris instructed the men to go over to Santa Cruz to hear him. Huddleson's declarations that he would not pay 62½ cents an hour and his threats that the men would be discharged if they persisted in their union activities were directed to the Stokely as well as to the Santa Cruz warehousemen. The Stokely warehousemen were locked out under the same circumstances as the Santa Cruz, as Morris had predicted, and though Gomez's contract with Huddleson nominally covered only the Santa Cruz plant, Gomez in fact took over Stokely as well as Santa Cruz after the lockout. Again, in all the negotiations for reinstatement, Huddleson failed to distinguish between the work at the Stokely and Santa Cruz warehouses, but offered to take back both the Stokely and Santa Cruz men indiscriminately. In his letter to Mr. Real and Mr. Spooner, the assumption that respondent's agent controls the labor at both warehouses and considers himself to be in a position to reinstate these men as well as those at Santa Cruz is also clearly apparent.

In view of respondent's habitual control and payment of these warehousemen we find that respondent is an independent contractor of warehouse labor for Stokely and that the five men here in question are employees of respondent.

(d) Concluding Findings of Fact on the Unfair Labor Practices.

By discharging from employment on August 7, 1935, and by thereafter refusing to reinstate Ernie Reich, George Costa, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad (Granada), Rufus Hughes, Nick De Carlo, Kenneth Torenson, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon (Gardner), Frank Freitas, Larry Doyle, and Jack Baker, and by each of said discharges, respondent discriminated in regard to tenure of employment and has thereby discouraged membership in the labor organization known as the Weighers, Warehousemen and Cereal Workers 38-44. [52]

By such discrimination in regard to hire and tenure of employment and terms and conditions of employment, respondent interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

(3) Effect of Unfair Labor Practices Upon Commerce.

It was found above that the men here involved actually start all the products of respondent upon the course of transportation to their ultimate destination. Interruption of the performance of their functions involves necessarily an interruption of the steady and continuous flow of commerce from

by the history of the present labor difficulty. When respondent's warehousemen found themselves locked out on the morning of August 8, 1935, they immediately formed a picket line, which was maintained until September 27, 1935, with such effectiveness that eventually the movement of trucks from warehouse to wharves ceased entirely. The teamsters refused to haul Santa Cruz merchandise; the warehousemen at the dock warehouses who ordinarily unload the canned foods from the cars prior to their reloading into the ships, since they were members of the same union as the Santa Cruz warehousemen, also declined to handle Santa Cruz cargo. As members of the sister union, I. L. A. 38-79, the stevedores who move the goods from dock to ship also refused to move Santa Cruz cargo both at the East Bay and San Francisco docks during the entire period that the picket line was maintained. Other unions whose members refused to move "hot" Santa Cruz cargo were those members of the Sailors who comprised the crews of steam schooners and whose duties include the handling of cargo.

Interference with the activities of employees in forming or joining labor organizations results in strikes and other forms of industrial unrest which in the canning industry have habitually had the effect of impeding the movement of canned products into interstate and foreign commerce. Thus official statistics of the United States Department of Labor on labor disputes in the canning and preserving industries indicate that of the fifteen strikes and lockouts in the industry in 1934 and the first half of

1935 eight were the outcome of difficulties in regard to union recognition and discrimination for union activities. 7,484 workers were involved in these stoppages, 2,581 of them in disputes concerning such union issues. 67,597 man-days of potential productive activity were lost to the industry, of which a total of 58,109 was owing to disputes in connection with organization matters.

The aforesaid acts of respondent have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

(4) The Contract with Gomez.

In accordance with its threat, respondent entered into an agreement with Gomez covering all the warehouse work at the Santa Cruz plant. The contract is dated August 1, 1935 and is nominally for a one year period, with an option of renewal in the contractor. This contract raises some question as to the nature of the appropriate order in this case. The evidence permits no doubt that respondent's motive in contracting out its warehouse work was prompted solely by a determination to eliminate the union from its plant at any cost. The decision in this case does not in the least imply the validity under the Act of such a contract entered into with such a motive. Circumstances peculiar to the instant case make it unnecessary, however, to decide the extent of the remedy which the Board may afford victims of unfair labor practices in this type of situation. The record here before the Board contains irrefutable evidence that respondent did not consider itself

precluded by its contract with Gomez from reinstating the men within the period covered by the agreement. At his meeting with Bridges, Woods and Jackson, Huddleson stated, "I am not in a position to put the other men back in the warehouse, [53] because I am not going to tell this man that has a contract with us to go and let his men go, and take the others back in their places . . . I will take them back as I can work them in and as I see fit." It is apparent, in view of the latter statement, that Huddleson could reinstate the men if he wished to do so. It may plausibly be inferred that Huddleson's offer, if it was to be meaningful under the circumstances, contemplated action before the expiration of the contractual one or two years period. This implication becomes more compelling in view of the fact that Huddleson's refusal (later in the conversation) to arbitrate his differences with the union with reference to reinstatement of the men was due to his failure to receive assurance that the union would desist from attempts to alter labor conditions in his warehouse after the men returned to work, rather than to his obligations to Gomez. Huddleson's letter of August 31, 1935 to Mr. Real and Mr. Spooner of the Central Labor Council of Alameda County establishes conclusively the fact that respondent, regardless of its contractual relation to Gomez, considers itself able to reinstate the men here involved. The relevant portions of the letter read as follows:

> "As explained to you, there are 38 men out at the present time and I understand that prac-

tically all of them would like to return to this plant under the same conditions under which they were working before they left.

This is to advise that, outside of 7 men whose conduct is such that we do not wish to have them in the organization, we will reinstate the balance of these men at the rate of 10 men a week until we have them back at work in this organization with the understanding that the organizers, who caused them to make a demand on us for approximately 22½¢ an hour more than is given by other people in this industry, stay away from them and leave them alone. In other words, when they come back here, they are to come back under exactly the same conditions that they were working under before they left."

We find that respondent in spite of its alleged contract with Gomez is in a position to reinstate the warehousemen involved in this case.

CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact and upon the entire record in the proceeding the Board finds and concludes as a matter of law:

(1) The Weighers, Warehousemen and Cereal Workers Local 38-44 is a labor organization within the meaning of Section 2, subdivision (5) of the National Labor Relations Act.

(2) Respondent, by discriminating in regard to the tenure of employment of Ernie Reich, George

Costa, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad (Granada), Rufus Hughes, Nick De Carlo, Kenneth Torenson, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon, (Gardner), Frank Freitas, Larry Doyle, Jack Baker, and each of them, has engaged and is engaging in unfair labor practices within the meaning of Section 8, subdivisions (1) and (3) of the Act.

(3) Such unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2, subdivisions (6) and (7) of the Act. [54]

ORDER

On the basis of the findings of fact and conclusions of law and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that respondent, Santa Cruz Fruit Packing Company, and its officers and agents, shall:

1. Cease and desist:

   (a) From discouraging membership in Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association, or in any other labor organization of its employees, by discharging or threatening to discharge any of its employees for join-

ing Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association, or any other labor organization of its employees; and

(b) From in any other manner discriminating against any of its employees in regard to hire or tenure of employment or any term or condition of employment for joining Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association, or any other labor organization of its employees; and

(c) From in any other manner interfering with, restraining or coercing its employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to Ernie Reich, George Costa, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad (Granada), Rufus Hughes, Nick De Carlo, Kenneth Torenson, Manuel Blanco, Joe Pepitone, John Reckling,

August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon (Gardner), Frank Freitas, Larry Doyle, and Jack Baker, immediate and full reinstatement, respectively, to their former positions, without prejudice to any rights and privileges previously enjoyed;

(b) Make whole said Ernie Reich, George Costa, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad (Granada), Rufus Hughes, Nick De Carlo, Kenneth Torenson, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon (Gardner), Frank Freitas, Larry Doyle, and Jack Baker, for any loss of pay they have suffered by reason of their discharge by payment to each of them, respectively, of a sum of money equal to that which each would normally have earned as wages during the period from the date of his discharge to the date of such offer of reinstatement, computed at the wage rate each was paid at the time of his discharge, less the amount earned subsequent to his discharge; [55]

(c) Post immediately notices to its employees in conspicuous places in various offices, stating (1) that respondent will cease and

desist in the manner aforesaid, and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting.

Signed at Washington, D. C., this 2nd day of April, 1936.

J. WARREN MADDEN
Chairman
JOHN M. CARMODY
Member
EDWIN S. SMITH
Member

[Seal] National Labor Relations Board

[56]

[Title of Court and Cause.]

AFFIDAVIT AS TO SERVICE

District of Columbia, ss:

I, Kenneth Ayres being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 2d day of April, 1936, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Decision to the following named persons, addressed to them at the following addresses:

De Coto and St. Sure, Financial Center Bldg., 14th and Franklin St., Oakland, Calif.

Sam Kagel, Esq., 85 Clay St., San Francisco, Calif.

KENNTH R. AYRES

Subscribed and sworn to before me this 2d day of April, 1936.

[Seal] JOHN E. LAWYER
Notary Public, District of Columbia

My commission expires September 8, 1939.

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

DECOTO & Sr. SURE
(Signature or name of addressee)
OLIVE A. BLEDSOE
(Signature of addressee's agent)

Date of delivery Apr. 6, 1936.

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

SAM KAGEL
(Signature or name of addressee)
S. A. MELNICOE
(Signature of addressee's agent)

Date of delivery Apr. 6, 1936. [57]

In United States Circuit Court of Appeals
For the Ninth Circuit

No. .....

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

SANTA CRUZ FRUIT PACKING COMPANY,
Respondent.

CERTIFICATE OF NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board, by its Secretary, duly authorized by Section 1 of Article VI of the Rules and Regulations of the National Labor Relations Board, effective the 28th day of April, 1936, does hereby certify that the documents annexed hereto constitute a full and accurate transcript of the entire record in a proceeding before the Board entitled "In the Matter of Santa Cruz Fruit Packing Company and Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association", the same being case No. C-51 before the said Board, said transcript including the pleadings, testimony and evidence upon which the order of the Board in the said proceeding was entered and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

1. Copy of charge filed by Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association, September 27, 1935.

2. Copy of complaint and notice of hearing issued by National Labor Relations Board November 2, 1935.

3. Copy of order of National Labor Relations Board designating Henry Eickhoff, Jr., as Trial Examiner, dated November 1, 1935. [58]

4. Copy of respondent's answer to complaint, verified November 8, 1935.

5. Copy of amended complaint and notice of hearing issued by National Labor Relations Board November 14, 1935.

6. Copy of order of National Labor Relations Board designating Roger J. Traynor as Trial Examiner in place and stead of Henry Eickhoff, Jr., dated December 17, 1935.

7. Stenographic report of hearing before Roger J. Traynor, Trial Examiner for National Labor Relations Board, on December 23 and 24, 1935 and January 2, 3 and 6, 1936, including all exhibits or copies thereof introduced in evidence.

8. Copy of intermediate report of Trial Examiner Roger J. Traynor, dated January 30, 1936.

9. Copy of respondent's exceptions to intermediate report, filed February 10, 1936.

10. Copy of decision, findings of fact, conclusions of law and order of National Labor Relations Board, dated April 2, 1936, together with affidavit of service and United States Post Office return receipts.

In testimony whereof, the Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 19th day of December, 1936.

[Seal] /s/ BENEDICT WOLF
Secretary
National Labor Relations Board

[59]

[Endorsed]: No. 8432. United States Circuit Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. Santa Cruz Fruit Packing Company, a corporation, Respondent. Transcript of Record. Upon Petition for the Enforcement of an Order of the National Labor Relations Board.

Filed January 4, 1937.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit

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PAGE

No. 8432

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

SANTA CRUZ FRUIT PACKING COMPANY,
Respondent.

Upon Petition for the Enforcement of an Order of the National Labor Relations Board

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PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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At a stated term, to-wit; The October Term, A. D. 1936 of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the fourth day of January in the year of our Lord one thousand nine hundred and thirty-seven.

Present: Honorable Curtis D. Wilbur, Senior Circuit Judge, Presiding, Honorable Francis A. Garrecht, Circuit Judge, Honorable William Denman, Circuit Judge.

No. 8432

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

SANTA CRUZ FRUIT PACKING COMPANY,
a Corporation,
Respondent.

ORDER GRANTING LEAVE TO FILE PETITION FOR ENFORCEMENT, ETC.

Upon consideration of the petition of National Labor Relations Board for leave to file petition for enforcement of certain order of said petitioner issued on April 2, 1936, in certain proceeding theretofore instituted by petitioner against respondent above named, and it appearing that petitioner is en-

titled to petition this Court, for the enforcement of said order, and that petitioner has prepared, certified and presented to the clerk of this court for filing a complete transcript of the entire proceedings had by and before petitioner,

Now, Therefore, It Is Hereby Ordered that petitioner herein be, and it is hereby allowed and given consent to file said petition and transcript of proceedings with the clerk of this court, and to docket said petition in this court.

And It Is Further Ordered that the petition for enforcement of said order be heard in this court upon the typewritten transcript of proceedings and record, without the necessity of having such transcript of record printed, but that counsel for the respective parties shall print in their briefs such portions of the pleadings and testimony as they desire to call to the attention of the court, in an appendix to such briefs.

And It Is Further Ordered that said briefs be prepared and printed in accordance with requirements of Rule 24 of the Rules of this Court; the brief for petitioner to be served and filed on or [61] before February 15, 1937, the brief for respondent to be served and filed within thirty days after receipt of a copy of petitioner's brief, and petitioner is privileged to serve and file a reply brief, if so advised, within fifteen days after receipt of a copy of respondent's brief, and thereafter this cause will be assigned for hearing at the direction of the Court.

And It Is Further Ordered that the matter of the liability for cost of printing the portions of the

record so selected shall not be governed necessarily by the present rule, but shall be hereafter determined. [62]

In the United States Circuit Court of Appeals
for the Ninth Circuit

October Term 1936—No. 8432

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

SANTA CRUZ FRUIT PACKING COMPANY,
a Corporation,
Respondent.

PETITION FOR THE ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

The National Labor Relations Board (hereinafter referred to as the Board), pursuant to the authority conferred upon it by the provisions of an Act of Congress approved July 5, 1935 (Public No. 198, 74th Congress, 29 U. S. C. Sec. 151 et seq.), known as the National Labor Relations Act, respectfully petitions this Honorable Court for the enforcement of a certain order issued by said Board in a pro-

ceeding instituted by it against respondent, Santa Cruz Fruit Packing Company. Said proceeding is known upon the records of the Board as case No. C-51, the title thereof being "In the Matter of Santa Cruz Fruit Packing Company, a Corporation, and Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association".

In support of this petition, the Board respectfully shows:

(1) Respondent, the Santa Cruz Fruit Packing Company, is and at all times herein mentioned was, a corporation organized under and existing by virtue of the laws of the State of California, and has and maintains places of business and transacts business at the cities of Oakland and Seabright in the State of California. [63]

(2) By reason of the matters alleged in paragraph (1) hereof, this Court has jurisdiction of this petition by virtue of Section 10(e) of the National Labor Relations Act.

(3) A charge having been duly filed with the Regional Director of the National Labor Relations Board for the Twentieth Region on the 27th day of September, 1935, by Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association, the Board, on the 2nd day of November, 1935, issued its complaint in said proceeding alleging that respondent had engaged in and was engaging in certain unfair labor practices affecting commerce within the meaning of the National Labor Relations Act, which said complaint,

together with a notice of hearing thereon, was duly served upon respondent. Thereafter, on November 8, 1935, respondent, Santa Cruz Fruit Packing Company, duly filed its answer to said complaint.

(4) Thereafter, on November 14, 1935, the Board issued its amended complaint alleging that respondent is engaged in foreign as well as interstate commerce.

(5) Thereafter, on December 23 and 24, 1935, January 2, January 3 and January 6, 1936, the Board by a Trial Examiner, duly held hearings upon said complaint, pursuant to due notice thereof. At said hearings it was stipulated by the parties that respondent's answer would apply to the complaint as subsequently amended as aforesaid. At said hearings full opportunity to be heard, to cross-examine witnesses and to produce evidence bearing upon the issues was afforded to all parties, and testimony and other evidence with respect to the allegations stated in said complaint was adduced by the Board. Following the Board's presentation of its case respondent offered no testimony but moved to dismiss said complaint on the grounds that the Board had no jurisdiction over respondent, and that the Board had failed to prove the allegations of said complaint. The Trial Examiner denied respondent's motion, and at the close of the hearings briefs were filed by respondent and by counsel for the Board. [64]

(6) Thereafter, on January 30, 1936, in accordance with the Rules and Regulations of the Board, the Trial Examiner filed with the Regional Director

of the Board for the Twentieth Region an intermediate report containing findings of fact and recommendations, which said intermediate report was duly served upon respondent. Thereafter, respondent filed with said Regional Director exceptions to said intermediate report

(7) Thereafter, on the 2nd day of April, 1936, the matter having come before the Board for determination, and the Board having duly considered the matter, including the said intermediate report and exceptions thereto, and being sufficiently advised in the premises and being of the opinion upon all the testimony and evidence that respondent had been and then was engaged in certain unfair labor practices affecting commerce within the meaning of said National Labor Relations Act, duly stated its findings of fact and issued and entered the following order directed to respondent:

"ORDER

"On the basis of the findings of fact and conclusions of law and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that respondent, Santa Cruz Fruit Packing Company, and its officers and agents, shall:

1. Cease and desist:

(a) From discouraging membership in Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association, or in any other labor organization of its employees, by

discharging or threatening to discharge any of its employees, for joining Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association, or any other labor organization of its employees; and

(b) From in any other manner discriminating against any of its employees in regard to hire or tenure of employment or any term or condition of employment for joining Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association, or any other labor organization of its employees; and

(c) From in any other manner interfering with, restraining or coercing its employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own [65] choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to Ernie Reich, George Costa, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad (Granada), Rufus Hughes, Nick De Carlo, Kenneth Toreson, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bed-

ford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon (Gardner), Frank Freitas, Larry Doyle, and Jack Baker, immediate and full reinstatement, respectively, to their former positions, without prejudice to any rights and privileges previously enjoyed;

(b) Make whole said Ernie Reich, George Costa, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad (Granada), Rufus Hughes, Nick De Carlo, Kenneth Toreson, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Frank Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon, (Gardner), Frank Freitas, Larry Doyle, and Jack Baker, for any loss of pay they have suffered by reason of their discharge by payment to each of them, respectively, of a sum of money equal to that which each would normally have earned as wages during the period from the date of his discharge to the date of such offer of reinstatement, computed at the wage rate each was paid at the time of his discharge, less the amount earned subsequent to his discharge;

(c) Post immediately notices to its employees in conspicuous places in its various offices, stating (1) that respondent will cease and desist in the manner aforesaid, and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting."

(8) The said order was duly served upon respondent and is, and at all times since its said issuance and service has been, in full force and effect.

(9) Respondent has not complied with the order of the Board heretofore set out in paragraph (7), and, upon information and belief, respondent will not comply with said order unless and until required so to do by this Court.

Wherefore the National Labor Relations Board petitions this Honorable Court for the enforcement of its said order of April 2, 1936, made and entered against the Santa Cruz Fruit Packing Company, the respondent herein; and pursuant to Section 10(e) of [66] said National Labor Relations Act, certifies and files with this petition the transcript of the entire record and the proceedings before the Board, including the pleadings, testimony and evidence upon which such order was entered, and the findings of fact and said order of the Board.

The National Labor Relations Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent, as provided by Section 10(e) of said National Labor Relations Act, and that this Court take jurisdiction of the proceeding and of the questions determined therein, and make and enter upon the pleadings, testimony, and evidence, and the proceedings set forth in such transcript, and upon the said order made thereupon, a decree enforcing in whole said order of the Board and requiring re-

spondent, its officers, agents and representatives, to comply therewith.

/s/ J. WARREN MADDEN
Chairman
/s/ DONALD WAKEFIELD SMITH
Member
/s/ EDWIN S. SMITH
Member
National Labor Relations Board

/s/ CHARLES FAHY
General Counsel,
National Labor Relations Board,
Washington, D. C.

/s/ ROBERT B. WATTS
Associate General Counsel,
National Labor Relations Board,
Washington, D. C. [67]

District of Columbia,
City of Washington—ss:

J. Warren Madden, Edwin S. Smith, and Donald Wakefield Smith being first duly sworn, depose and say that they are chairman and members, respectively of the National Labor Relations Board; that they have read the foregoing petition and have knowledge of the facts stated therein; and that the

statements made in the foregoing petition are true to the best of their knowledge and belief.

/s/ J. WARREN MADDEN
Chairman

/s/ DONALD WAKEFIELD SMITH
Member

/s/ EDWIN S. SMITH
Member

National Labor Relations Board

Subscribed and sworn to before me this 19th day of December, 1936.

[Seal] /s/ JOHN E. LAWYER
Notary Public, District of Columbia

My commission expires September 8, 1939. [68]

RETURN ON SERVICE OF WRIT

United States of America,
Northern District of California—ss:

I hereby certify and return that I served the annexed Order Granting Leave to File Petition for Enforcement, Etc. on the therein-named Santa Cruz Fruit Packing Company, a Corporation, Respondent, by handing to and leaving a true and correct copy thereof with Paul St. Sure, Attorney for Re-

spondent, personally at Oakland, California, in said District on the 7th day of January, A. D. 1937.

GEORGE VICE
U. S. Marshal.
By J. R. CUNNYNGHAM
Deputy.

Marshall's Fees

Travel	$ .72
Service	2.00
	$2.72

[Endorsed]: Received Dec. 31, 1936. Filed Jan. 12, 1937. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit.

Excerpt from Proceedings of Wednesday, May 5, 1937.

Before: Wilbur, Denman and Haney, Circuit Judges.

[Title of Cause.]

ORDER OF SUBMISSION

Ordered petition to enforce an order of the National Labor Relations Board in above cause argued by Mr. Philip Levy, Attorney, National Labor Relations Board, counsel for petitioner, and by Mr. J. Paul St. Sure, counsel for respondent, and submitted to the court for consideration and decision.

[70]

United States Circuit Court of Appeals
for the Ninth Circuit.

Excerpt from Proceedings of Saturday, July 31, 1937.

Before: Wilbur, Denman and Haney, Circuit Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION, CONCURRING OPINION AND DISSENTING OPINION AND FILING AND RECORDING OF ORDER.

By direction of the Court, Ordered that the typewritten opinion, concurring opinion and dissenting opinion this day rendered by this Court in above cause be forthwith filed by the Clerk and an order be filed and entered in the minutes of this Court in accordance with the opinion and concurring opinion rendered. [71]

[Title of Court and Cause.]

Upon Petition for the Enforcement of an Order of the National Labor Relations Board.

OPINION

Before: Wilbur, Denman and Haney, Circuit Judges.

Denman, Circuit Judge:

The National Labor Relations Board by its orders of April 2, 1936, required the respondent to "Cease and desist:

> "(a) From discouraging membership in Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association, or in any other labor organization of its employees, by discharging or threatening to discharge any of its employees for joining Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association, or any other labor organization of its employees; and
>
> "(b) From in any other manner discriminating against any of its employees in regard to hire or tenure of employment or any term or condition of employment for joining Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association, or any other labor organization of its employees; and

"(c) From in any other manner interfering with, restraining, or coercing its employees in the exercise of their rights of self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives [72] of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.",

and to take affirmative action, which the Board finds "will effectuate the policies of the Act", (a) to offer to several discharged employees "immediate and full reinstatement, respectively, to their former positions, without prejudice to any rights and privileges previously enjoyed"; and (b) to make whole said discharged employees "for any loss of pay they have suffered by reason of their discharge by payment to each of them, respectively, of a sum of money equal to that which each would normally have earned as wages during the period from the date of his discharge to the date of such offer of reinstatement, computed at the wage rate each was paid at the time of his discharge, less the amount earned subsequent to his discharge"; and to "post immediately notices to its employees in conspicuous places in its various offices, stating (1) that respondent will cease and desist in the manner aforesaid, and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting".

The Board has filed its petition in this court for the enforcement of the orders. Respondent Packing Company appears and contests the enforcement.

The respondent admits it is engaged in the canning and packing of fruits and vegetables, 39% of which are processed to be sold to persons in other states and foreign countries and shipped to them there. Its total pack in 1935 was in excess of 1,600,000 cases. It consisted of tomatoes and tomato products, peaches, apricots, spinach, pears, asparagus, and pork and beans, in volume, in the order named.

The respondent, relying solely on the unconstitutionality of the Labor Relations Act and the proceedings of the Board, does not question that the employees were dismissed by it because some of them had engaged in the formation of the Local of the union in question and all had joined it. Upon the lockout, the Local caused the Oakland plant to be picketed. Violence ensued, causing hospitalization of some of the participants. The product of the plant was declared "hot" and other locals of unions —teamsters, [73] dock clerks, scalers, seamen, and longshoremen—failed or refused to handle it. Blacklisting of respondent's products was attempted.

The Board found that the "bulk of" the agricultural products processed by the respondent came from the State of California and the respondent contends, and we accept the contention, that substantially all of the products were produced by growers in the state. Respondent further contends, and we agree with the contention for the purposes

of this decision, that the processing of the respondent, including the loading of its product in cars, is an intrastate activity as that is held to be in the Coe v. Errol case (116 U. S. 517, 518, 525).

The contention also was raised that under the agreements for the sale of the products, title was transferred to the purchaser prior to the actual entry of the goods into carriage by an interstate carrier, which contention we also accept for the purposes of this decision.

It appears that the respondent had two plants: one at Oakland, California, known as the "Santa Cruz plant" and one at Seabright, near Santa Cruz, California. The case as presented here concerns only the employees engaged at the Oakland plant and there is no showing that any of the products of the Seabright plant ever left the State of California.

We hold that so far as concerns the manufacture and shipping activities of the respondent and its employees at the Oakland plant, the labor dispute leading to the discharge of the employees, the declaration of the products as "hot", and the sympathetic refusal of other unions to handle them, "throttled" the flow of interstate commerce and "put in jeopardy" its future flow, to the extent of 39% of respondent's products manufactured to be shipped into that commerce.

The respondent relies on the decisions of Carter v. Carter Coal Co., 298 U. S. 238; United Mine Workers v. Coronado Coal Co., 259 U. S. 344;

Oliver Mining Co. v. Lord, 262 U. S. 172, and others holding that manufacture, lumbering, and mining processes, including the loading on to the cars of the product, and all activities up to actual movement out of the state, as in the Coe case, constitute intrastate production. Hence, the respondent contends, the Labor Relations Act is an attempt by the Congress to control the labor relations in such an intrastate activity and [74] violates the provisions of the Tenth Amendment to the Constitution.

The questions for our solution are:

(1) Is the Carter v. Carter Coal Co. decision overruled by the decision of the Supreme Court in National Labor Relations Board v. Jones & Laughlin Steel Corporation, 81 L. ed. 563, so far as the former holds that the Constitution gives no power to the Congress to regulate intrastate production and manufacture of goods with respect to its labor disputes, which diminish or throttle the flow of goods intended to be and which would be shipped into interstate commerce?

(2) Granting the Congress has such power, can it be exercised where 39% of the goods produced by the labor employed are shipped in interstate commerce and 61% remain within the state of manufacture?

(1) Carter v. Carter Coal Co. and similar cases are overruled by National Labor Relations Board v. Jones & Laughlin Steel Corporation.

Respondent's contention that the Carter case is not overruled by the Jones & Laughlin decision is squarely presented to this court and it would be

an evasion of our judicial obligation to deny it a full consideration or attempt to evade it by asserting that it is here "not controlling".

Three Circuits, the Second, Fifth, and Sixth, relied upon the principle established in the Carter case in holding that the National Labor Relations Act was unconstitutional. National Labor Relations Board v. Friedman-Harry Marks Clothing Co., (CCA-2) 85 Fed.(2) 1, 2; National Labor Relations Board v. Jones & Laughlin Steel Corp., (CCA-5) 83 Fed.(2) 998, 999; Fruehauf Trailer Co. v. National Labor Relations Board, (CCA-6) 85 Fed.(2) 391, 392.

In all three of these cases there was an antecedent import of raw materials entering into the production, over which the Labor Relations Board asserted the right to regulate the employer and employee. Here, the respondent asserts, is a case identical with the Carter Coal case, in what, it insists, is the controlling fact that, as in mining coal, both the fruit and vegetables and the canned and packed product are produced in the state. [75]

It is patent that the Carter case is identical in fact and relevant principle with that of respondent.

Unless overruled it clearly is controlling in so far as it denies the constitutional right of the Congress to regulate labor disputes affecting substantially the volume of a manufacturer's output which is "to be" transported in interstate commerce and which may be throttled from that transport and

ultimate sale in another state unless so regulated.

Great stress is laid on the fact that the Congress has not before exercised such a power over labor relations in production of goods to be transported into interstate commerce. It is argued that if it may regulate labor disputes because it will affect the volume of goods to be transported in interstate commerce, it may regulate the volume itself of, say, shoes or clothing or furniture or food products, or the material used in the construction of housing, produced for use in other states. It is urged that all such production generally has been conceived as a matter of state control, and there are pointed out dangers of political control of such matters by bureaus in Washington. It is suggested that the Constitution was framed to meet a pioneer agricultural economy in which nearly everything consumed was grown or made on the farms or in the neighboring towns. Hence it is further urged that the framers of the Constitution never would have lodged in the Congress its powers over interstate commerce if it had envisioned an economy in which practically all the clothing we judges wear, every object contained in the chambers in which we sit, and the major part of the material entering the construction of the building in which the court is housed, come from some state other than California.

The answer to these contentions we have made in our decision in Edwards v. U. S., No. 8386, decided by this court on July 22, 1937. It is that the Carter case is overruled by the Jones & Laughlin decision;

that the Constitution did give the Congress the power so to regulate interstate commerce; and that that power is plenary as to all productive activities which substantially affect or tend to throttle the volume of goods to be transported in commerce outside the state of production.

Conventional historic attitudes towards states' rights are highly important in the political world when faced with the practica- [76] bility of novel proposals of the exercise of congressional power. It may or may not be politically wise at any particular time for the Congress to proceed with caution, but this in no way concerns the judicial question of the extent of the power. To refrain from or to hesitate in decision when the question is fairly presented well may cause the paralysis and frustration of efficient legislative and executive action.

The reasoning and holding of the Edwards case, supra, answers in the negative the first of respondent's contentions.

(2) The specific Constitutional grant of power to the Congress by Article I, section 8, to regulate commerce among the states and with foreign nations is paramount to the exercise by the states of the power of regulation of the intermingled intrastate commerce, included in the general reservation of state powers by the Tenth Amendment.

Hence, if any substantial percentage of a product produced in a state is produced to enter interstate or foreign commerce, the Congress may regulate its

production, in so far as it affects the volume to enter such commerce, though such regulation also regulates a larger percentage of product which does not leave the state.

Section 8 of Article I of the Constitution makes a specific grant of power over interstate commerce. The Tenth Amendment is a general reservation of all powers not granted. There is no limit placed on the grant, no proviso that because the states also have exercised certain powers over manufacture and other production, the Congress is to be in any way hampered in the full exercise of its regulation. The Supreme Court has repeatedly held the contrary.

Construing the general reservation of state powers by the Tenth Amendment, as affected by the specific grant of power to regulate interstate commerce of Article First, paragraph 8, of the Constitution, the Supreme Court held:

> "This reservation to the States manifestly is only of that authority which is consistent with and not opposed to the grant to Congress. There is no room in our scheme of government for the assertion of state power in hostility to the authorized exercise of Federal power. The authority of Congress extends to every part of interstate commerce, and to [77] every instrumentality or agency by which it is carried on; and the full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the comingling of inter-

state and intrastate operations. This is not to say that the Nation may deal with the internal concerns of the State, as such, but that the execution by Congress of its constitutional power to regulate interstate commerce is not limited by the fact that intrastate transactions may have become so interwoven therewith that the effective government of the former incidentally controls the latter. This conclusion necessarily results from the supremacy of the national power within its appointed sphere."

The Minnesota Rate Case, 230 U. S. 352, 399.

The Jones & Laughlin case holds that the disorganization and disturbance of labor affecting interstate commerce does not have to be of railway employees to bring it within the control of Congress. The interference as well may come from labor conditions in the intrastate business entirely different from transportation.

"The opinion in that case [Virginia R. C. v. System Federation, 81 L. ed. 470] also points to the large measure of success of the labor policy embodied in the Railway Labor Act. But with respect to the appropriateness of the recognition of self-organization and representation in the promotion of peace, the question is *not essentially different in the case of employees in industries of such a character that interstate commerce is put in jeopardy,* from the case of employees of transportation companies. And of what avail is it to protect the facility of

transportation, if interstate commerce is throttled with respect to the commodities TO BE transported." (Emphasis supplied.)

National Labor Relations Board v. Jones & Laughlin S. Corp., 81 L. ed. 563, 578.

The Shreveport case, 234 U. S. 342, relied upon by the Supreme Court for its decision in the Jones & Laughlin case, holds that a company, by the rate charge of its intrastate business, may affect the rates of its interstate business in such a way that the intrastate business rate come within Congressional regulation. The fact that both of the businesses happen to be transportation is not relevant.

[78]

The analogy between the Shreveport case and the Santa Cruz Fruit Packing Co. is complete. In each the conduct of the intrastate business, the one as to its rates and the other as to its labor, affects the interstate business arising from the activities of the respective companies. In one this is accomplished by producing an unfair rate upon the commodities "to be" transported, and in the other by throttling the interstate business in the commodities "to be" transported. In both the intrastate business puts "in jeopardy" the proper and fair conduct of the commerce among the states. The acceptance by the Supreme Court of the doctrine of the Shreveport case again demonstrates the overruling of the Carter case.

The Shreveport case does not determine the right of Congress to control the intrastate activity in rate

making upon any ratio between the volume of business under the intrastate rates and under the interstate rates. In the Jones & Laughlin case no significance is attached to the fact that 75% of the steel and other manufactured products entered interstate commerce, or that but 25% of intrastate manufacture was regulated.

Respondent is the fifth or sixth largest of the California companies processing and packing fruits and vegetables. The 39% of its business which enters into interstate commerce is a sufficiently substantial amount to warrant the Congress to make effective its regulation, even though thereby the 61% which is intrastate business is regulated with reference to labor disputes. The intermingling of the two activities does not take from the Congress the right to regulate that substantial portion over which the Constitution has specifically granted the control to the Federal government.

The suggestion that we should make an academically arbitrary 50% as the boundary line between the two jurisdictions ignores the practical necessities of industry. Shall it be 50% in volume or price? What happens when for the first 6 months of the year 60% is exported, and 40% is domestic, and for the rest of the year the percentages are reversed? Does the Federal control end on June 30th? On which is the burden of proof, the state interest or the Federal? How unfair may be the competition between the industry producing the 60% for export

under Federal regulation and its competitor with 40% under state regulation or no regulation at all! [79]

Industry and business cannot thrive, in some cases it could not exist, in the uncertainty of such an abstract mathematical solution of the problem. It cannot be inferred that the Congress intended to create a situation so confusing alike to employer and employee.

What are the sufficient minima of producers' contributions to the flow of commerce to warrant congressional regulation must be decided as the questions arise. We have no doubt that the Santa Cruz Company's contribution, both as to volume added to interstate and foreign commerce and percentage of its output is "affecting commerce" within the meaning of the Act.

We therefore hold that the Constitution granted to the Congress the power to regulate respondent's labor relations with reference to all of its employees at its Oakland plant engaged in the production of canned and packed fruits and vegetables, the processing of 39% of which was intended for interstate commerce and had been throttled for a considerable period from entering that commerce, although the remaining 61% remain within the state of production.

The Board's orders to cease and desist applied to all of the employees of the respondent, but the evidence shows no shipments by respondent into interstate commerce from its Seabright plant. The or-

ders should be modified to apply only to the employees of the Oakland plant; otherwise they should be enforced.

The orders of the National Labor Relations Board, so modified with respect to confining their effect to the employees of the Oakland plant of the respondent, are ordered enforced. [80]

Haney, Circuit Judge, Concurring.

I concur.

I believe Carter v. Carter Coal Co., 298 U. S. 238, was in effect overruled by Nat. Labor Rel. Bd. v. Jones & Laughlin Steel Corp., decided by the Supreme Court April 12, 1937, though it is true that no words are contained in the opinion in the latter case which indicates that the Carter case was formally considered to be overruled. It is merely stated that the Carter case is "not controlling".

What then is the controlling factor to be considered in connection with the jurisdiction of the Board? In the Jones case, the Supreme Court quoted §10(a) of the act conferring jurisdiction on the Board, and then stated: "The critical words of this provision, prescribing the limits of the Board's authority in dealing with the labor practices, are 'affecting commerce'." The definition of "commerce" in §2(6) of the act makes no attempt to define interstate or foreign commerce. The word "definition" as applied to commerce in said section is a misnomer in a sense. The [81] only part thereof which may be called a definition, is the portion that restricts the broad meaning to "interstate and for-

eign commerce in the constitutional sense", but the section makes no effort to determine or define such commerce in that sense. I am unable to find anything in the Jones case which defines anew "interstate commerce". Were it necessary to make such a definition, I believe the inference which might properly be taken from the Jones case is that anything which either starts or aids the flow of the stream is interstate or foreign commerce. As applied here, the beginning of the flow would be traceable to the planting of the seed. Successive stages would consist of the planting and growing, sale and delivery to respondent, the canning, the shipment in interstate commerce, and each step thereafter until the product reached the hands of the consumer and was consumed by him. Each step would be a part of the stream. Such an interpretation is what I believe to be the intent of the words as used in the Constitution.

However, I do not believe the Supreme Court made such a definition, because under its construction of the act, a new definition is unnecessary. The Board, by the act, is given jurisdiction over an unfair labor practice "affecting commerce" as defined in §2(7). The cases depend on this provision. The Supreme Court construed this provision, as follows:

> "This definition is one of exclusion as well as inclusion. The grant of authority to the Board does not purport to extend to the relationship between all industrial employees and

employers. Its terms do not impose collective bargaining upon all industry regardless of effects upon interstate or foreign commerce. It purports to reach only what may be deemed to burden or obstruct that commerce and thus qualified, it must be construed as contemplating the exercise of control within constitutional bounds. It is a familiar principle that acts which directly burden or obstruct interstate or foreign commerce, or its free flow, are within the reach of the congressional power. Acts having that effect are not rendered immune because they grow out of labor disputes * * * *It is the effect upon commerce, not the source of the injury which is the criterion* * * * Whether or not particular action does affect commerce in such a close and intimate fashion as to be subject to federal control and hence [82] to lie within the authority conferred upon the Board, is left by the statute to be determined as individual cases arise * * *" (Italics supplied).

Thus it is quite plain that we are to consider only one thing, i.e., the effect of the unfair labor practice on interstate commerce. But it is pointed out in the Jones case that the effect on interstate commerce, of the unfair labor practice must be direct and immediate and not indirect and remote, the court saying:

"* * * Undoubtedly the scope of this power must be considered in the light of our dual sys-

> tem of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government * * * The question is necessarily one of degree * * *"

The rule is like the ones relating to a state tax on an instrumentality of the federal government or on an instrumentality of interstate commerce, and a federal tax on an instrumentality of state government. I believe all of them are based on the modification of the rule in McCulloch v. Maryland, 17 U. S. (4 Wheat.) 316, by Banks v. Supervisors, 74 U. S. (7 Wall.) 26, 29 and in National Bank v. Commonwealth, 76 U. S. (9 Wall.) 353, 361. All of these rules, although theoretically sound, are unwise in a practical sense. No gauge has ever been made by which a given effect may be determined to be either direct or remote. As a result we have speculation and uncertainty. Compare the dissenting opinion in Brush v. Commissioner, decided by the Supreme Court on March 15, 1937.

However in the instant case applying that rule, it is plain to see that interstate commerce is obstructed, because production of goods was halted by the unfair labor practice. I do not believe that it is important whether 98% of respondent's production or only 1% of it, actually moved in interstate com-

merce. So long as 1% of the goods so moved, the unfair labor practice obstructed the movement to that extent. The effect would therefore be direct and immediate. [83]

Wilbur, Circuit Judge, dissenting:

I dissent.

The Supreme Court having decided in National Labor Relations Board v. Jones & Laughlin Steel Corp., 57 S. Ct. 615, and in the companion cases (N. L. R. B. v. Friedman-Harry Marks Clothing Co., 57 S. Ct. 645; N L. R. B. v Fruehauf Trailer Co, 57 S Ct. 642; Washington, Virginia & Maryland Coach Co v. N. L. R. B., 57 S. Ct. 648; Associated Press v. N. L. R. B., 57 S. Ct. 650) that the regulatory power of Congress under the Interstate Commerce clause of the Constitution extends to the protection of the collective bargaining system between employer and employee in those industries whose products enter so largely into interstate commerce that a strike of the employees preventing production would directly affect interstate commerce, it is necessary to apply the principles enunciated in those cases to the case at bar.

In considering the interpretaion of the federal Constitution it is quite true that the founders of our government did not realize the changes which would come by reason of the increased facilities for interstate communication and business such as the railroad, steamboat, airplane, telegraph, telephone and radio. While these increased facilities have not changed the Constitution or its meaning they have vastly extended its application. The framers [84]

of the Constitution probably never suspected that profanity whispered into a microphone in Portland, Oregon, would be heard around the world and thus bring that subject under federal control. (Duncan v. U. S., 48 F.(2d) 128) No one now questions the right of Congress to legislate concerning this vastly wider field. Laws regulating radio communication and airplane traffic have been accepted as a matter of course because they clearly relate to interstate commerce. The Constitution has not changd in that respect, it has not grown. It is interstate commerce which has grown. The activities of the people, however, in engaging in such interstate enterprises have brought them under the regulatory power of Congress under the federal Constitution.

In the Jones & Laughlin case, supra, it is pointed out that when industries organize themselves on a national scale so that interstate commerce is a necessary factor of their activities, they are subject to regulatory power of Congress under the commerce clause of the federal Constitution.

It is our duty to support the Constitution of the United States as interpreted by the Supreme Court. It is therefore of the utmost importance in this case to ascertain what the Supreme Court has decided with reference to the constitutionality and applicability of the Wagner Labor Relations Act and to apply that conclusion to the factual situation presented in the case at bar.

The Supreme Court did not lay down any definite general rule upon the subject. It did hold, as to

particular industries considered in the Jones & Laughlin case and companion cases, that Congressional power extended to the protection of collective bargaining in the plants of the employers there involved.

In the Jones & Laughlin Steel Corporation case, supra, 75% of the product is shipped out of Pennsylvania. It is one of the four largest producers of steel in the United States. In the trailer case (N. L. R. B. v. Fruehauf, 57 S. Ct. 642, supra) 50% of the material used was imported from other states, 80% of the product was shipped outside the state. In the clothing case, (N. L. R. B. v. Friedman, 57 S. Ct. 645, supra) 99.57% of the goods came from other states, 75% being purchased in New York alone, 82.8% of the output purchased by customers outside the state. [85]

None of these cases approximate the condition presented in the case at bar. All of them dealt with cases in which a large part of the raw material manufactured by the employers was imported into the state for the purpose of manufacture and was in fact exported from the state after manufacture. In the case at bar we have the defendant engaged in preparing homegrown products for the market knowing that according to its usual business 39% of that product would enter into interstate or foreign commerce. The grower who produces the fruit does not know what part of his fruit, if any, will enter into interstate commerce. He sells it to the

respondent knowing, perhaps, that 39% of the product of the cannery will enter into foreign or interstate commerce. The cannery does not segregate its employees into groups, some working upon material to enter into interstate and foreign commerce, and others upon material to be sold in intrastate commerce. There is no segregation of the product at any time until after the cannery and warehousing operations are completed.

The decision of the Board is predicated upon the proposition that a strike might result if collective bargaining were denied and that if such a strike occurred it would directly affect interstate commerce by shutting off production. That decision, assuming jurisdiction over the respondent's entire Oakland and Seabright plants so far as collective bargaining is concerned, is not predicated upon any clear line distinguishing between the employees working in the plant as to the character of the work performed but is based on the theory that inasmuch as 39% of the product finds its way in interstate commerce a restriction of the output of the plant would diminish the amount of material entering into interstate commerce pro tanto. There is no evidence to support this conclusion other than the assumption that the business would be divided in the same way whether the amount of the product was great or small. None of the cases decided by the Supreme Court went as far as does this decision of the Board. Not only was most of the raw material of the employer in those cases imported from outside the state, but in each case more than 75% of the result-

ing product entered into interstate and foreign commerce. Here we have none of the products from outside the state and less than half the product entering interstate commerce. As the cases decided by the Supreme Court are not directly applicable because the facts differ, [86] we turn to the reasoning by which the majority of the Supreme Court reached its conclusion to see if such reasoning is applicable or decisive herein.

Taken broadly the logic of this reasoning would justify the conclusion of my associates, but the majority of the Justices of the Supreme Court, as well as the minority, foresaw the danger that the opinion, pressed to its logical conclusion, might result in leaving to the sovereign states only the empty hull of government and admonished that in applying these decisions we must not only consider as a factor in the problem the direct effect upon interstate commerce of the collective bargaining system, but must also consider as a factor the authority of the state over its domestic concerns expressly and impliedly reserved by and to them by the Constitution. In that regard I quote from the opinion of the majority, written by the Chief Justice, as follows: (57 S. Ct. 624:)

"Undoubtedly the scope of this power must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create

a completely centralized government. id. The question is necessarily one of degree. As the Court said in Board of Trade of City of Chicago v. Olsen, supra, 262 U. S. 1, 37, 43 S. Ct. 470, 477, 67 L. Ed. 839, repeating what had been said in Stafford v. Wallace, supra: 'Whatever amounts to more or less constant practice, and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause, and it is primarily for Congress to consider and decide the fact of the danger and to meet it'."

The minority of the court, upon this subject, say:

"It is vital that the independence of the commercial power and of the police power, and the delimitation between them, however sometimes perplexing, should always be recognized and observed, for, while the one furnishes the strongest bond of union, the other is essential to the preservation of the autonomy of the states as required by our dual form of government; and acknowledged evils, however grave and urgent they may appear to be, had [87] better be borne, than the risk be run, in the effort to suppress them, of more serious consequences by resort to expedients of even doubtful constitutionality."

This danger was pointed out by the Supreme Court in Kidd v. Pearson, 128 U. S. 1, cited by the minority of the Supreme Court in the dissenting opinion in the Jones & Laughlin case. The court there said: (57 S. Ct. 638)

"'If it be held that the term [commerce with foreign nations and among the several states] includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that congress would be invested, to the exclusion of the states, with the power to regulate, not only manufacture, but also agriculture, horticulture, stock-raising, domestic fisheries, mining,—in short, every branch of human industry.'"

Nearly a half century ago, in the case of Kidd v. Pearson, 128 U. S. 1, supra, the Supreme Court held that a state could prohibit the manufacturing of intoxicating liquor within its borders notwithstanding such liquor was intended for transportation to other states, and was manufactured for that purpose. The Court stated:

"It is true that, notwithstanding its [the state prohibition statute] purposes and ends are restricted to the jurisdictional limits of the state of Iowa, and apply to transactions wholly internal and between its own citizens, its effects may react beyond the state by lessening the amount of intoxicating liquor exported. But does it follow that, because the products of a domestic manufacture may ultimately become the subjects of interstate commerce at the pleasure of the manufacturer, the legislation of the state respecting its manufacture is an attempted exercise of the power to regulate commerce exclusively conferred on Congress? Can it be said that a refusal of a state to allow articles to be manu-

factured within her borders (for export) any more directly or materially affects commerce than does her action in forbidding the retail within her borders of the same articles after they have left the hands of the importers?"

To this query the Supreme Court answered "No". In answering the question the Supreme Court cited the earlier cases (the [88] license tax cases, 5 Wall. 470) decided seventy years ago, where it is said: "Over this commerce and trade [the internal commerce and domestic trade of the states] Congress has no power of regulation nor any direct control. This power belongs exclusively to the states. No interference by Congress with the business of citizens transacted within a state is warranted by the Constitution, except such as is strictly incidental to the exercise of powers clearly granted to the legislature. The power to authorize a business within a state is plainly repugnant to the exclusive power of the state over the same subject."

This statement of elementary constitutional law was made arguendo in deciding that Congress could not authorize a business prohibited by the state and that its license tax did not operate to permit the licensee to conduct a business in a state which prohibited that business. It may well be that the recent decisions of the Supreme Court in the Wagner Act cases depart from this earlier rule in holding as they do that the volume of output of a local business entering into interstate commerce may become the subject of federal legislation because it directly

affects interstate commerce, but the many decisions of the Supreme Court on the same subject must not be considered as completely brushed aside or disregarded or overruled by these recent decisions. Assuming, then, that the recent decisions extend the previous limits of federal power over local business because that business directly affects interstate commerce, the question in the case at bar is whether or not the conclusion of the petitioner that the ultimate destination of 39% of respondent's production in interstate and foreign commerce, subject to the regulatory power of Congress should control the other 61% of the production normally subject to state regulation, is a reasonable recognition of the right of the state government to control its domestic affairs. In considering the relative rights of the state and federal governments it should be remembered that after the Revolution full sovereignty was vested in each of the original states subject to minor control by Congress under the Articles of Confederation and that the federal government now has only such powers as were then granted to it by the states in the Constitution of 1787, and such as were granted by the amendments thereto. This, although historically clear, was made definite by the Tenth Amendment to the Constitution ratified in 1791 expressly reserving to the states, and to the people, all powers not given to the United States. Is it to be believed that full power would have been given to Congress [39] over interstate and foreign commerce if it had been thought by those who formed the Constitution in 1787 and con-

sented to its adoption at that time, that lying dormant within this general grant of power was a power to control practically every activity in a state if a small percentage of the product of this activity entered interstate or foreign commerce? The historical answer is clearly that such a provision so construed would not have been adopted.

In a sense we should view the case before us as if the parties involved were the state of California on the one hand and the federal government on the other, each asserting jurisdiction over the parties to this action, and each asserting the right to regulate the relation of employer and employee here involved. Is it logical to say that the federal government should control a confessedly intrastate or domestic activity because 39% of its product is shipped out of the state, and to deny to the state government the power to regulate the industry or any part of it for that reason, although 61% of the product is consumed within the state? Was it the intention of the thirteen original states when they adopted the Constitution to grant such power to the federal government? As the Supreme Court has often declared, where interstate commerce is concerned the federal government is supreme by reason of the interstate commerce clause of the Constitution. This rule has been enunciated from the first but in the instant case it is not asserted that the thing regulated is interstate commerce but merely something domestic — intrastate — which "directly affects" interstate commerce. So that we are concerned with an exercise of this corollary power rather than with the direct grant of power to Con-

gress. Certainly in this broader and more nebulous field exercise of power by the federal government should give due recognition to the inherent right of the sovereign state to control its own domestic affairs. I cannot believe that where less than 50% of the manufactured product enters into interstate and foreign commerce the federal government is justified under the interstate commerce clause in seizing or exercising jurisdiction over the whole industry. The line must be drawn somewhere and it seems to me that it must at least be drawn so that control will reside in the sovereignty most affected by the action.

The Wagner Act does not expressly authorize any interference with the powers of the state nor define what constitutes direct [90] interference with interstate or foreign commerce. If Congress had asserted jurisdiction over industries and activities wherein a certain percentage, say 50% or more, of its products, ultimately moved in interstate or foreign commerce, the court would sustain the action of Congress if it had any reasonable doubt of the constitutionality of its action. In such a case the presumption that Congress had acted constitutionally would only be overborne where it was clear beyond a reasonable doubt that its action was not authorized by the Constitution. But in the Wagner Act Congress did not undertake to draw the line to which it attempted to extend its authority other than by the general assumption of power over foreign and interstate commerce and over collective bargaining between employer and employee di-

rectly affecting such commerce, leaving to the National Labor Relations Board in the first instance the determination of whether or not the establishment of collective bargaining directly affected interstate commerce in each particular case. The conclusion of the Board upon the factual situation is made conclusive upon the courts. But the question of constitutional interpretation is one for the court to be applied by it to the facts found by the National Labor Relations Board. The ultimate fact found by the Board is that 39% of the output of the respondent enters into interstate and foreign commerce, for its must be assumed as a matter of law under the decision of the Supreme Court in the Jones & Laughlin S. Co., case that as to such commerce the matter of collective bargaining directly affects it, and that Congress consequently has power to establish, protect and maintain the right to collective bargaining. We may assume that if a line can be drawn between the employees engaged in producing goods for interstate and foreign commerce and those engaged in production for intrastate consumption, Congress would have legislative power over the former and the state over the latter, but we are concerned with a situation where no attempt has been made or could be made to segregate such employees, and where, because of that fact jurisdiction is asserted over all employees, thus in effect reversing the rule that federal power should clearly appear before its exercise is justified. We may agree, as the Supreme Court has decided, that control over a manufacturing plant may be asserted

because a cessation of its activities on account of a strike would diminish the volume of interstate commerce, but to hold that the exercise of power extends to the intrastate products, and labor [91] producing them, is to take another step away from the direct grant of power to Congress over interstate commerce in favor of federal power, which is not justified unless the federal interest preponderates.

Congress laid down no certain guide for the Board or the Court in reaching its conclusions, and has provided that the action of the Board is ineffective until approved by the Court. The question as to whether under the facts found by the Board there is a direct effect upon interstate commerce is one to be solved by the Court without any guide other than the proposition advanced by the statute and sustained by the Supreme Court as a valid exercise of constitutional authority, namely, that collective bargaining is a matter for federal control where the employees are engaged in activity which directly affects interstate commerce. As a matter of cold logic it may be said that if the decrease in the volume of output of a factory decreases the volume of interstate commerce it pro tanto directly affects such commerce, whether the amount is 100% or one per cent. For in either case the Supreme Court has decided that the effect is direct, and that the constitutional power of Congress attaches thereto. But we are not dealing with an abstract problem of mathematics, but with one of the practical construction of the federal constitution concerning the relative rights of states of the

United States and of the individuals concerned. As the line of state and federal authority must be drawn somewhere, I can see no other logical division than that of the line which determines which interest preponderates, foreign and interstate commerce on the one hand, or domestic or intrastate commerce, on the other. Let it be granted that this conclusion is not entirely logical or satisfactory, nevertheless it seems to be the only escape from a legalistic formulae which, under the guise of regulating commerce between the states, virtually transfers to the federal government substantially all the power which pertain to state sovereignty and which have been traditionally exercised by each of them ever since the Constitution was adopted. This formulae is not based upon the clear grant of power to Congress over interstate commerce, but upon what is held to be a necessary incident thereto. I recognize the logic and discernment of my associates in this case, but I cannot assent thereto because it proves entirely too much, and this because in my opinion it ignores a vital and essential element in the problem, that is, the superior and dominant power of [92] the state over its internal affairs. I therefore conclude that the application of the Board for an enforcement order in this case should be denied.

Thus far I have assumed, as my associates do, that the order of the Board relates to all the employees of the respondent. The cease and desist order quoted in the main opinion apparently applies to all the employees of the respondent but in the

petitioner's brief it is emphasized that the order of the Board relates to employees engaged as warehousemen at the Oakland plant. The petitioners state in their brief that,

"Approximately 3,000 to 4,000 cases are loaded daily into the various vehicles of conveyance. The employees here involved are the warehousemen who do all of such loading. * * *

"Thus the employees here involved actually start all of the respondent's products upon the course of transportation to their ultimate destination. * * *

"In a concluding finding with respect to the nature of respondent's business and the duties of these employees the Board found that all of the aforesaid constitutes a continuous flow of trade, traffic and commerce among the several states, and with foreign countries; and that the warehousemen here involved are engaged in operations in the course and conduct of such commerce and are an integral part of such commerce.

* * *

"It is to be noted that we are concerned here only with that phase of the respondent's business in which it is engaged in shipping its finished products to states outside of California and to foreign countries. We are not concerned with that phase of respondent's business in which the products are processed. The employees with whom we deal here are solely those who are engaged in actually packing, loading, and shipping respondent's finished products into box cars, trucks, and other interstate carriers destined for points in other states and in foreign

countries. They are the employees who actually ship the respondent's finished products in interstate and foreign commerce. We do not deal here with the other employees who are engaged in processing the various raw materials of the respondent. Therefore, we do not consider in this brief the application of the National Labor Relations Act to any other than shipping employees.

* * * [93]

"The activities of the respondent and the employees here involved are divorced from and are not affected by the other activities of the respondent. The respondent and its employees, insofar as the operations here involved are concerned, are directly engaged in interstate and foreign commerce and consequently are validly subject to Congressional regulation under the Act. Gibbons v. Ogden, 9 Wheat. 1; Heyman v. Hays, 236 U. S. 178; Southern, etc. Co. v. Hays, 236 U. S. 188; Sioux Remedy Co. v. Cope, 235 U. S. 197.

"The fact that the respondent is also engaged in the processing, production, or manufacture of canned goods does not divest its operations in selling and shipping its products to points outside of California of their interstate character."

"For the purpose of our Constitutional argument we are therefore justified in ignoring the fact that the respondent is engaged in processing or production, with which activities we are not here concerned."

In view of the fact that the petitioners in their brief limit the effect of their order to the ware-

housemen in the Oakland plant, I think the cease and desist order should be thus limited. However, this contention was advanced before the Supreme Court had sustained the validity of the Wagner Act as applied to intrastate activities which directly affect interstate commerce, and, consequently, the Board might not consider themselves now bound by the limitations which they thought advisable in presenting a constitutional question before the decision of the Supreme Court. My associates have dealt with the order of the Board as though it applied to all the operatives in the Oakland plant so far as the jurisdiction of the Board is concerned and so far as the order to cease and desist is concerned. I am inclined, however, to think that the Board's interpretation of its own order confining the effect thereof to those engaged in shipping respondent's product should be observed in our enforcement order.

In my opinion the application for the enforcement order should be denied, but if granted should be applied only to the employees of the respondent engaged in shipping at its Oakland plant.

(Endorsed:) Opinion, Concurring Opinion and Dissenting Opinion. Filed Jul. 31, 1937. Paul P. O'Brien, Clerk. [94]

United States Circuit Court of Appeals for the Ninth Circuit.

Excerpt from Proceedings of Saturday, July 31, 1937.

Before: Wilbur, Denman and Haney, Circuit Judges.

[Title of Cause.] [95]

Order Upon Petition for the Enforcement of an Order of the National Labor Relations Board

The National Labor Relations Board, hereinafter referred to as the Board, having petitioned this court for the enforcement of its Order in the above entitled proceeding, pursuant to Section 10(e) of the National Labor Relations Act, and having certified and filed in this court a transcript of the entire record in the proceeding before the Board, including the pleadings, testimony and evidence upon which said Order was entered and the findings and Order of the Board, and notice of the filing of the said petition and transcript having been served upon respondent, and this court having taken jurisdiction of the proceeding and the questions determined [96] therein,

Now, then, upon the pleadings, testimony, evidence and proceedings set forth in such transcript and upon the said Order made therein, it is Ordered, Adjudged and Decreed that the respondent, Santa Cruz Fruit Packing Company, its officers and agents, shall;

1. Cease and desist:

(a) From discouraging membership in Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association, or in any other labor organization of its employees, by discharging or threatening to discharge any of its employees for joining Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association, or any other labor organization of its employees; and

(b) From in any other manner discriminating against any of its employees in regard to hire or tenure of employment or any term or condition of employment for joining Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association, or any other labor organization of its employees; and

(c) From in any other manner interfering with, restrain- [97] ing or coercing its employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action in order to affectuate the policies of the National Labor Relations Act:

(a) Offer to Ernie Reich, George Costa, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott,

Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad (Granada), Rufus Hughes, Nick De Carlo, Kenneth Torenson, Manuel Blanco, Joe Pepitone, John Reckling, August Sanneback, Water R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivers, L. H. Ledtke, Orville Gordon (Gardner), Frank Freitas, Larry Doyle, and Jack Baker, immediate and full reinstatement, respectively, to their former positions, without prejudice to any rights and privileges previously enjoyed; [98]

(b) Make whole said Ernie Reich, George Costa, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad (Granada), Rufus Hughes, Nick De Carlo, Kenneth Torenson, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, P. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon (Gardner), Frank Freitas, Larry Doyle, and Jack Baker, for any loss of pay they have suffered by reason of their discharge by payment to each of them, respectively, of a sum of money equal to that which each would normally have earned as wages during the period from the date of his discharge to the date of such offer of reinstatement, computed at the wage rate each was paid at the time of his discharge, less the amount earned subsequent to his discharge;

(c) Post immediately notices to its employees in conspicuous places in its various offices, stating (1) that respondent will cease and desist in the manner aforesaid, and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting.

Approved as to form this 8th day of August, 1937.

(Sgd.) J. PAUL ST. SURE,
Attorney for Respondent.

[Endorsed]: Order upon petition for the enforcement of an order of the National Labor Relations Board. Filed and entered July 31, 1937. Paul P. O'Brien, Clerk. [99]

Before the National Labor Relations Board
Twentieth Region.

Case No. XX-C-1.

In the Matter of: SANTA CRUZ FRUIT PACKING COMPANY, a Corporation,

and

WEIGHERS, WAREHOUSEMEN AND CEREAL WORKERS LOCAL 38-44, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION.

Extra Sessions Courtroom, Alameda County Court House, Oakland, California, Monday, December 23, 1935.

The above-entitled matter came on for hearing, pursuant to notice, at 10:00 o'clock a. m.
Before:

Roger J. Traynor, Trial Examiner.

APPEARANCES:

BERTRAM EDISES,
Regional Attorney on behalf of the National Labor Relations Board.

PAUL ST. SURE and
E. H. MOORE,
Financial Center Building, Oakland, California, on behalf of the Santa Cruz Fruit Packing Company.

SAM KAGEL,
Room "C" Ferry Building, San Francisco, California, on behalf of Weighers, Warehousemen and Cereal Workers Local 38-44, International Longshoremen's Association. [101]

PROCEEDINGS.

Trial Examiner Traynor: This is a hearing in the Matter of the Santa Cruz Fruit Packing Company, a corporation, and Weighers, Warehousemen and Cereal Workers Local 38-44, International Longshoremen's Association, Case No. XX-C-1.

I have here a copy of the order designating me as Trial Examiner, which I will ask to be made a part of the record.

(Said order is in the words and figures following, to-wit:

United States of America
National Labor Relations Board.

I, Benedict Wolf, Secretary of the National Labor Relations Board, and official custodian of its records, do hereby certify that attached is a full, true, and complete copy of: Santa Cruz Fruit Packing Company, a Corporation and Weighers, Warehousemen and Cereal Workers Local 38-44, International Longshoremen's Association. Case No. XX-C-1.

In Witness Hereof, I have hereunto subscribed my name and caused the seal of the National Labor Relations Board to be affixed this 18th day of December, A. D. 1935, at Washington, D. C.

[Seal] (Signed) BENEDICT WOLF,
Secretary. [102]

United States of America
Before the National Labor Relations Board

At a regular meeting of the National Labor Relations Board, held at its office in the City of Washington, D. C. on the 17th day of December, 1935.

Present: J. Warren Madden, Chairman
John M. Carmody
Edwin S. Smith

Case No. XX-C-1.

In the Matter of SANTA CRUZ FRUIT PACKING COMPANY, a Corporation

and

WEIGHERS, WAREHOUSEMEN AND CEREAL WORKERS LOCAL 38-44, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION.

ORDER DESIGNATING TRIAL EXAMINER.

A charge having been filed in this matter, and it having appeared to the Regional Director of the 20th Region that a proceeding in respect thereto should be instituted, and the Board having considered the matter and being advised in the premises,

It Is Hereby Ordered that Roger J. Traynor act as Trial Examiner in the above case, in place and stead of Henry Eickoff, Jr., and perform all the duties and exercise [103] all the powers granted to trial examiners under the Rules and Regulations—Series I of the National Labor Relations Board.

By direction of the Board:

[Seal] BENEDICT WOLF

Secretary.")

Are you ready to proceed?

Mr. Edises: Ready, Mr. Examiner.

Mr. St. Sure: We have already given, Mr. Examiner, to the reporter the formal appearance of myself, Paul St. Sure, and E. H. Moore, associated with me, in behalf of the Santa Cruz Fruit Packing Company.

Before proceeding in the matter, I desire, as the rules of the Board would authorize us, to make a motion to dismiss the proceeding.

Mr. Edises: (Interrupting) Before Mr. St. Sure proceeds further may I interrupt to have my formal appearance, Bertram Edises, entered in the record as counsel for the Board.

Mr. Kagel: I would like to enter my appearance for the Weighers, Warehousemen and Cereal Workers Association, Local 38-44,—Sam K-a-g-e-l.

Mr. St. Sure: The motion I desire to make is a motion to dismiss the complaint upon the ground that the Act upon which, or under which the complaint is brought, the National [104] Labor Relations Act, approved July 5, 1935, violates the Constitution of the United States and, particularly, the Commerce Clause and the Fifth Amendment of the Constitution, relating to due process of law.

And, further, we base our motion to dismiss upon the contention that even though it be assumed that the Act is not unconstitutional, that the facts stated in the complaint are insufficient to furnish the basis for an action under the Act itself, in this:

That upon, or from the face of the complaint it appears that the action is brought against a concern which is engaged in the processing and packing of fruits and green vegetables; that the particular violations complained of relate to certain employees who were employed in the warehouse department of that concern which was engaged in what we contend to be an intrastate business, that is, the packing and processing of fruits and so forth.

I do not desire to argue the law of the matter at

this time, unless the Examiner desires, for I assume that this same objection, that is, the basis of this objection, is expected to be made in connection with the proceedings on behalf of the employers when these same issues will be raised.

We do desire to assert our position, as we also understand the rules permit us to do, that our position in this proceeding, both by answer and by actual presence here, and [105] by participation in the proceedings, shall not constitute a waiver of this motion or our, in a sense, general demurrer to the proceedings and the complaint itself.

Similarly, we desire to object to the introduction of evidence under the complaint upon these theories that I have mentioned:

First, the unconstitutionality of the Act and the lack of jurisdiction of the Board; and also the lack of jurisdiction because the complaint does not state sufficient facts to constitute the basis of a charge.

In making that general objection to the introduction of any evidence, I pould like, if possible, by stipulation with counsel, and with the approval of the Examiner, to have it understood, that that general and basic objection will go to the entire proceeding, feeling that if it can be so agreed, we can save a lot of time avoiding my making objection each time a question is asked and each time a new line of testimony is offered.

Our position is simply that we feel that the proceeding is under an Act, under these circumstances, which has not any effect or authority; that the Board is without jurisdiction, and that we should and must object to the introduction of this testi-

If the suggestion I have made is agreeable, we can perhaps save considerable time, it being understood that my [106] objections run throughout the proceeding.

Trial Examiner Traynor: Is that agreeable?

Mr. Edises: I think I can stipulate to that.

Likewise, I believe that it will possibly save time if we stipulated that all objections which are overruled will be deemed excepted to.

Mr. St. Sure: That will be satisfactory. I didn't know the procedure in that connection.

Trial Examiner Traynor: So stipulated?

Mr. St. Sure: The understanding is, as Mr. Edises, said, it may be deemed that the general objection to the jurisdiction and the proceeding itself, and the introduction of any evidence under the complaint, under the theory of a general demurrer, will be reserved and considered as having been made.

Trial Examiner Traynor: Yes.

Mr. St. Sure: If we have any further or specific or particular objection to any particular testimony, we will make that objection specially at the time.

Trial Examiner Traynor: It will be so understood.

Mr. St. Sure: Thank you.

Mr. Edises: I do not propose at this time to go into an extended discussion of the constitutionality of the National Labor Relations Act other than to note my disagreement with counsel's contention, that is, that the provisions [107] of this act do not

constitute a proper exercise of the interstate commerce powers given to the central government under the Federal Constitution.

It is our intention to prove, during the course of this proceeding, that the Respondent was engaged in interstate commerce; that these workers, whom we claim were discriminated against within the meaning of the National Labor Relations Act, were likewise engaged in work of an interstate commerce nature.

And, in view of the challenge of counsel for Respondent to the constitutionality of the Act, a challenge which naturally goes to the findings of Congress, as well as other sections of the Act, it will probably be a part of our case to demonstrate that there has been an actual obstruction in this case of interstate and foreign commerce.

During the course of our proof we intend to indicate not only the interstate and foreign commerce operations of the Respondent, but also to prove something of the general economic nature of the canning industry. Such proof has been declared by the Supreme Court of the United States to be highly important in the case of Acts, the validity of which depend upon certain economic facts.

I note that counsel for the Respondent has not filed an amended answer to the amended complaint. My recollection, however, is that the amended complaint introduced no material [108] different allegations, and I am perfectly willing to stipulate that the denials of the original answer may go to the allegations of the amended complaint, providing they are applicable.

Mr. St. Sure: For the purpose of the record, it is my understanding the only variation between the original complaint and the amended complaint is that in the amended complaint there is a statement affirmatively alleging that the Respondent engaged in, and is engaging in foreign commerce, in addition to interstate commerce.

I believe that in our answer to the original complaint we specifically and generally denied an allegation which was not present. We denied we were engaged in either interstate commerce or in foreign commerce.

At the time the amended complaint was served that matter, which I have just stated, was discussed I believe with Mr. Wagenet and it was my understanding, and my recollection of that discussion, that our answer to the original complaint should be deemed in this proceeding to be an answer to the amended complaint.

If that is agreeable, as I understand it is from Mr. Edises' statement, we will consider our answer to the original complaint be considered as deemed to be filed herein as an answer to the amended complaint as well.

Trial Examiner Traynor: So ordered. [109]

Mr. Edises: So stipulated.

I wish at this time to move for the Examiner to deny the motion of counsel for a dismissal of this action based on his allegations of unconstitutionality.

Trial Examiner Traynor: The motion is denied without prejudice.

Mr. Edises: You are referring to Mr. St. Sure's motion.

Trial Examiner Traynor: Mr. St. Sure's motion?

Mr. Edises: Yes.

Trial Examiner Traynor: Yes.

Mr. Edises: I will ask Mr. Anger to take the stand.

ROBERT ANGER,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Edises) What is your name?

A. Robert Anger.

Q. And your address?

A. 5810 Shattuck Avenue, Berkeley.

Q. Are you married?

A. I am.

Q. Have you any children?

A. Three.

Q. When did you first go to work for the Santa Cruz Fruit [110] Packing Company?

A. In the spring of 1932.

Q. And how did you go about getting the job? Who did you apply to?

A. There was a foreman of the warehouse that I knew and had worked with before. I happened by the place one day and was talking to him.

He said, "Are you working?"

I said, "No."

He said, "Come on out; I have got a job for you."

(Testimony of Robert Anger.)

Q. That man was foreman of the Santa Cruz plant?

A. Not the foreman of the plant, but the foreman of the warehouse.

Q. You applied for a job?

A. I didn't apply; I was told to come on out to the job.

Q. And he hired you?

A. He hired me the following day.

Q. And what sort of work did you do at the Santa Cruz warehouse?

A. I went in and was handling cases and loading cases, and finally went into where I was working on the labeling machine. I did that for the most of that year.

Q. Can you describe briefly the general nature of the work which a man in the warehouse does?

A. Yes, I think I can. [111]

Q. Will you?

A. I did about the same kind of work as the average man that was in the warehouse. We work on the labeling machines, tailing off.

Q. What does "tailing off" mean?

A. After the cases are filled with cans they are run out on a roller and we have to stack them and take them away on trucks and keep them out of the way of the labeling machine. They are coming through fast. We loaded trucks and did general warehousework, trucking and loading, or any work there is to be done in the warehouse.

Q. Where is the Santa Cruz warehouse located with reference to the canning plant where the canning operations take place?

(Testimony of Robert Anger.)

A. It is attached right directly to the same building, except there is a wall between the two.

Q. And a doorway?

A. Doorways, yes, three of them.

Q. Were the men in the warehouse shifted around from one type of work to another, or was one man constantly assigned to a specific type of work?

A. The men were shifted to all kinds of jobs. They had a few machine men that worked pretty steady on the labeling machines, but whenever they were called on to do something else, they went and did that work. [112]

Q. I take it that one day you would be doing stacking or labeling, and the next day—

A. (Interrupting) We did no stacking. That was done by the can stackers under the Contract.

Q. How about the loading? Was that pretty widely distributed among the men in the warehouse?

A. Yes, loading both trucks and cars.

Q. And you were subject to being assigned to loading duty at any time and at any day, is that correct?

A. The last year and a half I was in the plant I was handling the salvage and dirty cans, relabeling and fixing them up, and getting them ready for the market; and at any time they wanted an extra man they would come and call me.

Q. And to do loading and things of that sort?

A. Yes.

Q. What did you load?

A. Pardon?

(Testimony of Robert Anger.)

Q. What did you load?

A. We loaded on the regular trucks that backed up to the door, and we loaded into railroad cars.

Q. Was the goods packed into cartons?

A. In cartons and wooden cases.

Q. And did you load only into trucks?

A. No; we loaded into railroad cars.

Q. And what railroad was that, what line was that? [113]

A. I think it is the Southern Pacific; I am not sure.

Q. And there is a spur line coming directly up to the warehouse?

A. Yes.

Q. And the warehousemen loaded these cartons of canned goods directly into the box cars, is that correct?

A. Correct.

Q. Were the cartons marked with the destinations of the goods?

A. Yes.

Q. Referring to the place of shipment, did you ever notice the places of shipment of these cartons?

A. Certainly.

Q. What were some of the chief places of shipment that you observed.

A. In the United States?

Q. Well, let's start first with the United States, yes.

(Testimony of Robert Anger.)

A. New York, Boston, Philadelphia, Cincinnati, Detroit, Chicago, Sioux City, Marshalltown and many others.

Q. Did you ever notice the names of the consignees on the cartons, the firms to whom the products were directed?

A. Yes.

Q. What were some of those?

A. The Marshalltown Canning Company was a big buyer.

Q. And where is that located? [114]

A. Marshalltown, Iowa.

Q. And some of the others?

A. I say Marshalltown, Iowa—that is where the most of it went, and distributed from there. Then Seeman Brothers of New York—I believe, of New York.

Q. Any others?

A. Well, hundreds of small firms that used to buy. It is hard to remember their names, because you don't watch the names. They come through and you just load them. They are in stacks and you are told to load from that stack as many as you want. I didn't watch the names.

Q. I am referring to some of the more important consignees out of California points. Do you remember of any others to whom large quantities were shipped, other than the ones you named?

A. I have seen large shipments go to London, Liverpool; some shipped to Southampton and Hull, Manchester.

(Testimony of Robert Anger.)

Q. You are referring to ports in England, are you not?

A. Yes.

Q. Any others?

A. Well, those were some of the main ports. I don't remember them all.

Q. Have you any knowledge of approximately how much canned goods—I presume that you refer to them by cases—about how many cases of canned goods were shipped out, or trucked out of the warehouse per day during the busy season, [115] which, I presume, is from about June to September?

A. No, I have no idea as to that.

Q. About how many box care per day were loaded?

A. I have seen three, four cars loaded a day.

Q. And about how much of the stuff was destined for points outside of the State of California, including to foreign countries, if you know?

Mr. St. Sure: If he doesn't know the total, he can scarcely know a portion of the unknown total.

Mr. Edises: He can give an idea if he doesn't know exactly how much was shipped out.

Mr. St. Sure: I have no objection to the question.

A. Judging from the volume that was shipped out of the place, I would say 75 per cent to 80 per cent went out of the state.

(Testimony of Robert Anger.)

Q. (By Mr. Edises) Do you know the method of transportation of that canned goods?

A. Some of it was shipped direct by car.

Q. By car, you mean by box cars?

A. By box car. Some was shipped by trucks to its destination.

Q. Do you know whether those trucks went to points outside of the State of California?

A. Well, they went north to Seattle and Portland, by trucking companies that haul up and down the Coast. [116]

Q. Do you happen to know the names of any of those trucking companies?

A. No, I do not.

Q. Any other methods of shipment?

A To the docks, to go on the boats to go East.

Q. To which—

A. (Interrupting) To foreign countries.

Q. To which docks?

A. Howard Terminal and Encinal Terminal.

Q. Where is Howard Terminal?

A. At the foot of Market Street.

Q. In Oakland?

A. Yes.

Q. Where is Encinal Terminal?

A. Over in Alameda.

Q. And what happened to it then?

A. Well, I presume it was loaded on boats. In fact, I have seen it loaded on boats.

(Testimony of Robert Anger.)

Q. Have you any knowledge of about what proportion was shipped by water and what proportion shipped by rail, and what by truck?

A. No, I would have no knowledge of that.

Q. Who did the hiring and firing at the Santa Cruz warehouse? I am referring now to the summer of 1935.

A. Well, I believe Mr. Torsen did—T-o-r-s-e-n.

[117]

Q. I think that is spelled T-o-r-e-n-s-o-n.

A. Yes.

Q. You say you believe Mr. Torenson did. Don't you know?

A. I believe. I wasn't present when he hired or fired any one so I couldn't say definitely.

Q. Was he the foreman of the warehouse in which the Santa Cruz goods was stored?

A. He was.

Q. Who supervised the work in the warehouse?

A. He did, accompanied by an assistant.

Q. Who was the assistant?

A. Ernie Reich.

Q. And I take it that Mr. Torenson gave orders in regard to the work in general, told the men what to do?

A. The orders all came from the main office to his office.

Q. Was he the one that told the various men what particular work they were supposed to do?

A. Yes sir.

(Testimony of Robert Anger.)

Q. During the month of July, 1935, what hours were you working?

A. The hours were not the same. Some mornings the boys would go to work at 6 o'clock, and sometimes 7 o'clock.

Q. I didn't ask you about when the boys went to work. I asked you what hours you worked.

A. I was going to work all the time at 7 o'clock; once in [118] awhile of mornings I would go in at 8 o'clock.

Q. Were you on the day shift?

A. Yes, all the time.

Q. Tell me what hours you worked, from 7 to when?

A. From 7 to 12; and from 12:30 to 5, 5:30, 6, 6:30 and 7, up until 10 and 11 o'clock at night.

Q. What hours did you get off for your meals?

A. Half an hour off at noon.

Q. From 12 to 12:30?

A. Yes; and 45 minutes for supper.

Q. What time did you get off for supper?

A. 6 o'clock.

Q. And you came back at 6:45?

A. Correct.

Q. And you worked until when?

A. That is hard to say; it varied. Some nights it would be 9 o'clock, some 8:30, and sometimes 10, and I have worked later.

Q. Doing work later than that during the busy season?

A. Yes.

(Testimony of Robert Anger.)

Q. What time did you get off during the busy season?

A. 5:30.

Q. In the afternoon?

A. Yes.

Q. And when you got off at 5:30 in the afternoon were you [119] through for the day?

A. I was through for the day.

Q. Was that an exceptional thing during the busy season?

A. I think it was for me, yes.

Q. How was it determined when you were supposed to be through for the day?

A. Well, I think it was determined by the amount of orders that was to be put up.

Q. Well, who told you?

A. If there was a lot of orders, we had to work later.

Q. Did Torenson tell you when you could get away, when you could knock off?

A. Yes.

Q. When were you paid?

A. On Fridays.

Q. How many times a month?

A. Every week.

Q. Every week?

A. Yes.

Q. And how did you get your pay checks?

A. Go up to the office and get it most of the time. Occasionally, if we were running a little slack, and there was not much work in the office, the timekeeper would come around and hand us our checks.

(Testimony of Robert Anger.)

Q. What office did you go to to get your checks? [120]

A. Santa Cruz.

Q. The Santa Cruz—

A. (Interrupting) Up in front of the cannery.

Q. Whose office was that?

A. Whose office?

Q. Yes.

A. I presume the Santa Cruz.

Q. I mean who was in charge of that office?

A. Well, there was a timekeeper there.

Q. Who was he?

A. I know him only by the name of Mack. Probably some of the other boys can give you his name.

Q. Who signed you pay checks?

A. Robert Gaddis.

Q. Any other name on the check?

A. Yes, it was countersigned by Dr. Kenney.

Q. Do you mean Keeney—K-e-e-n-e-y?

A. Yes.

Q. Whose checks were they, Santa Cruz?

A. Stamped Santa Cruz; printed, rather.

Q. What was the full name of the company that appeared on the check?

A. Santa Cruz Packing Company.

Q. Santa Cruz Fruit Packing Company, is that correct?

A. Well, I don't recall the "Fruit". I recall the Santa [121] Cruz Packing Company.

Q. What is this Stokely Warehouse—where is it located?

A. Directly across the street from the Santa Cruz warehouse.

(Testimony of Robert Anger.)

Q. Did you ever work there?

A. No.

Q. Do you know whether any of the other men who were regularly employed in the Santa Cruz warehouse ever worked at the Stokely warehouse?

A. Yes.

Q. What was the practice in that respect?

A. At times, when work was slack in either one or the other warehouses, and they would have more work on the other side, some of the boys from Santa Cruz would go over there; and when it was reversed, they came from the Stokely side over to the Santa Cruz side.

Q. And who was the foreman at the Stokely warehouse?

A. Stanley Morris.

Q. Do you know who his boss was?

A. Well, the boss, I believe, of the two warehouses, the man considered the boss, was a man named Joe Remington, who was supposed to be the superintendent of the entire plant.

Q. Who was his boss, if you know?

A. I presume Mr. Huddleson.

Q. Did the Stokely men receive their pay checks from the [122] same source that you did?

A. Yes sir.

Q. Did you ever see any of their pay checks?

A. Yes sir.

Q. Whose names appeared on them as signer?

A. Robert Gaddis and Dr. Keeney.

Q. Were they likewise Santa Cruz Fruit Packing Company checks?

(Testimony of Robert Anger.)

A. Yes sir.

Q. What were some of the more important products that you handled in the warehouse?

A. Well, I don't know as any one product was any more important than the others.

Q. Well, perhaps "important" isn't the word. What product was put up in the largest quantities during the summer season?

A. During the summer season, peaches.

Q. And then what?

A. Cots.

Q. You mean apricots?

A. Yes.

Q. And then what?

A. Well, they canned cherries.

Q. Anything else?

A. Spinach, pork and beans, vegetables. [123]

Q. What kind of vegetables?

A. Carrots, beans.

Q. Any asparagus?

A. Yes, plenty of it,

Q. Do you know what vegetable product was handled in the largest quantities?

A. Spinach, I think.

Q. How about tomatoes?

A. Tomatoes were handled largely, too.

Q. Just how did the products get from the cannery to the warehouse? Describe the process.

A. By electric truck.

Q. Who did the trucking?

A. George Rose.

(Testimony of Robert Anger.)

Q. Just one man?

A. Yes sir. He was the truck driver.

Q. Do you know whether Mr. Rose is one of the complainants in this action?

A. He is.

Q. Do you know what was the—strike that—take, for example, peaches; do you know what the usual or customary interval of time was between the trucking of the cans into the warehouse and the loading of those cans on to trucks or box cars for shipment?

A. Yes; that varied. Lots of buyers would purchase large [124] quantities of peaches to be put up for them, and put up in stacks in the warehouse to be given on orders as they called for them. Others was brought directly from the canning in the warehouse, as soon as the cans cooled, and they were labeled, cased and shipped to their destination.

Q. Are you a member of the Weighers, Warehousemen and Cereal Workers Local 38-44?

A. I am.

Q. Which is affiliated with the International Longshoremen's Association?

A. Yes.

Q. When did you join that union?

A. On August 7, 1935.

Q. When did you first make application to join?

A. About two weeks previous to that time.

Q. When did you pay your dues?

A. Well, we didn't pay our dues until after we were initiated.

(Testimony of Robert Anger.)

Q. When did you first get your union button?

A. On Monday, August 5th.

Q. 1935?

A. 1935.

Q. How did you happen to apply for membership in the union?

A. Because I wanted to get better working conditions and [125] better money, better wages.

Q. Can you describe what working conditions you were interested in changing?

A. The long hours.

Q. Don't characterize. Be specific. Tell us just what the hours were, and so on.

A. My hours were hardly ever less than nine, from that to ten and eleven, twelve and fourteen hours. I wanted to get on an eight hour day.

Q. By the way, to interrupt you for a moment, had you ever belong to the union before?

A. I have right here in this city.

Q. For long?

A. Two and a half years.

Q. What union was that?

A. The Engineers' Local No. 57, which is now 59.

Q. Now, go ahead with the account of the conditions you were interested in changing.

A. I was interested in changing the long hours, and I wanted to get more money for the work I was doing.

Q. What were you getting?

A. 35 cents an hour. I started to work for the company for 22½ cents an hour.

(Testimony of Robert Anger.)

Q. Any other matters that you were concerned about?

A. The wages and hours was what I was concerned in. [126]

Q. So, wanting to change these conditions, what did you do about it?

A. I investigated the Weighers, Warehousemen and Cereal Workers Union.

Q. How did you happen to take it on yourself to investigate it?

A. Simply because I had been a union man before, and by joining the union that I did, it bettered by condition and bettered my wages.

Q. Was there any kind of a union at the Santa Cruz plant prior to this?

A. None that I knew of.

Q. Go ahead. What did you do?

A. I started in and went to the different boys and talked to them to find out if they were willing to become union men.

Q. And by the "boys" you mean whom?

A. The boys I was working with.

Q. In the warehouse?

A. Yes.

Q. Go ahead.

A. And I found almost every one of them ready to become union men.

Q. When did you first start talking to them about it?

(Testimony of Robert Anger.)

A. About the middle of June.

Q. 1935. [127]

A. Yes sir.

Q. Go ahead with your account.

A. As those men admitted their willingness of wanting to join a union, I had them sign a sheet of paper. I finally got both the warehouses, the Santa Cruz Packing Company and the Stokely warehousemen signed up 100 per cent.

Q. Every man in the warehouses?

A. Every man in the warehouses except the foreman and the shipping clerk.

Q. What did their signature represent, what were they signing for?

A. It was showing their willingness to become union men.

Q. Members of any particular union?

A. Weighers, Warehousemen and Cereal Workers Union was what we wanted to join.

Q. You had already contacted the Weighers and Warehousemen, had you?

A. Yes sir.

Q. When did you first contact them?

A. I contacted them about the 23d or 24th of July.

Q. 1935?

A. Yes.

Q. Who did you see then?

A. Mr. Woods.

Q. Who is he? [128]

A. Their business agent.

(Testimony of Robert Anger.)

Q. Their business agent?

A. Yes.

Q. Where are the headquarters of this union?

A. 908 West 7th Street, in Oakland.

Q. What was Mr. Woods' response to your statements?

A. I met Mr. Woods, talked with him, told him the amount of men we had in the two warehouses, and that we wanted to become union men. Mr. Woods told me to go ahead and get those men all signed up, and if they paid over their initiation fees of 100 per cent, the union would take them in, and I done so.

Q. You went about the process of collecting their dues and so on?

A. I did; collecting their initiations fees, not their dues.

Q. Initiation fees?

A. Yes.

Q. When did you do this work?

A. Noons, nighttime, when we were walking up the street.

Q. Did you collect any of their initiation fees while you were on duty?

A. Not while I was working, no.

Q. Did you bring this to the attention of the management of the plant? [129]

A. I did not.

Q. Why didn't you?

A. Because I knew I would be fired.

(Testimony of Robert Anger.)

Mr. St. Sure: I take it that the rules permit formal objections, and I assume that the Examiner has authority to rule on conclusions of that kind as not evidence.

Mr. Edises: I am willing to let the last voluntary statement go out as not responsive.

Mr. St. Sure: I haven't objected to hearsay because I assume the Examiner is going to sift out the things that are material and those that are not material.

Trial Examiner Traynor: I think answers like the last one should be stricken out.

Mr. St. Sure: Thank you.

Q. (By Mr. Edises) Did you solicit membership in the union of any one other than the warehousemen?

A. I did not.

Q. Why didn't you?

A. There was no other union for us to affiliate with but the warehousemen. We were warehousemen.

Q. Why didn't you go after the cannery workers?

A. The cannery workers were not connected with us at all.

Q. In other words, the warehousemen were by themselves?

A. By themselves entirely; yes.

(Testimony of Robert Anger.)

Q. Now, by August 3, 1935, had 100 per cent of the ware- [130] housemen, in both the Stokely and the Santa Cruz warehouses indicated their desire to join the union?

A. They had.

Q. And when did Mr. Woods tell you definitely that these men would be taken into the union?

A. Monday, August 5th.

Q. When did the men first receive their union buttons?

A. Some of the men got them that day, Monday.

Q. Did you hand out most of them that day?

A. No, I only had a few, eight or nine.

Q. Eight or nine?

A. Yes.

Q. Did you work Monday, August 5th?

A. I did.

Q. What time did you go on shift?

A. 7 o'clock.

Q. By the way, do you punch a time card when you go on?

A. No, we don't puch our own card.

Q. Who punches it?

A. The card is in Mr. Torenson's office. You go in each morning and get the card from him and he punches the time in it with a hand punch; and he punches it out at night when you are through.

Q. Did you wear your union button that day?

A. I did. [171]

(Testimony of Robert Anger.)

Q. Did anything particular happen that day with reference to the union?

A. Not during the day, no.

Q. Well, on Monday, August 5th?

A. I believe Mr. Huddleson called a meeting at that time. I went home at 5:30. I wasn't at the meeting.

Q. You weren't at the meeting?

A. No.

Q. How did you hear about it?

A. They told me about it the following morning.

Q. Who told you?

A. All the boys; everybody was talking about it.

Q. You say you left at 5:30 that day?

A. Yes.

Q. Were you supposed to return later in the evening?

A. No.

Q. You were through for the day?

A. I was through for the day.

Q. Did anybody else give out buttons besides yourself?

A. Not to my knowledge.

Q. Calling your attention now to Tuesday, August 6, what time did you go on shift that day?

A. 7 o'clock.

Q. And what time did you knock off?

A. 5:30. [172]

(Testimony of Robert Anger.)

Q. Anything particular happen that day with reference to the union?

A. Nothing.

Q. Did you see Mr. Woods that day?

A. On Tuesday?

Q. Yes.

A. I saw Mr. Woods on Monday but not on Tuesday.

Q. What did you see Mr. Woods about Monday?

A. He came out with the buttons. He had a few buttons. He was covering his territory. He went around to all the ports and various, different places, and he came along and left the buttons with me to give out to the boys.

Q. Did Mr. Woods tell you anything at that time about an initiation meeting?

A. Yes.

Q. What was said?

A. That we were to come Wednesday night to be initiated.

Q. Where was the initiation to take place?

A. 908 West 7th Street; that is the Weighers and Warehousemen's union hall.

Q. Did you tell any one about the initiation meeting, tell any of the men?

A. I told many of them; that is, I didn't tell them all individually that day but I told one boy and he would tell another in the various, different departments they were [173] working in.

(Testimony of Robert Anger.)

Q. And you didn't see Mr. Woods on Tuesday?

A. Not that I recall.

Q. Did you see—strike that—do you know a Mr. Gomez?

A. By sight only.

Q. Did you see him either at or in the vicinity of the Santa Cruz plant on Monday, August 5th, or on Tuesday, August 6th?

A. I saw him Monday, Tuesday and Wednesday in the plant.

Q. Where did you see him on Monday?

A. Walking around in the warehouse, in Stanley Torenson's office talking ta Stanley Torenson.

Q. What was he doing in the warehouse? What did you see him doing?

A. I saw him walking up and down the aisles with a piece of paper in his hand. What he had on the paper, I don't know.

Q. Did you talk to him?

A. I did not.

Q. About what time was that on Monday? [134]

A. I saw him a couple or three different times during the day each day.

Q. Do you remember approximately the time?

A. Well, I remember I saw him in the mornings around 10 o'clock, and in the afternoon around 2:00 or 2:30 going through the warehouse.

Q. And on Tuesday, when and where did you see him?

A. Practically in the same places.

(Testimony of Robert Anger.)

Q. And what did you see him doing?

A. I presume he was looking over the stock room, the stock of canned goods, the stacks.

Q. I am not asking what you presumed he was interested in. I am asking you what you saw him doing.

A. That is all, walking up and down the aisles and looking at the stacks and looking at the piece of paper he had in his hand.

Q. Calling your attention now to Wednesday, August 7th, what time did you go on shift on that day?

A. Seven o'clock.

Q. And had you handed out all of your union buttons by that time?

A. All that I had in my possession.

Q. Were the men wearing them?

A. Yes.

Q. Did you see Mr. Gomez around at any time on Wednesday? [135]

A. I did.

Q. Do you remember the times?

A. I saw him in the morning.

Q. About what time?

A. About 10 o'clock.

Q. And then when?

A. Around 2:30 in the afternoon.

Q. Did you see him later?

A. Yes.

Q. When?

(Testimony of Robert Anger.)

A. At 2:30, particularly, I saw him come in with two Chinamen.

Q. Are you quite certain of that time, 2:30?

A. Yes, very closely.

Q. What did he do at that time?

A. He came in the side door of the warehouse off of the street, and walked in with the two Chinamen walking behind him, and came right down to the printing press where I was working. I was helping the printer that day.

Q. Yes.

A. And just as he got to Mr. Torenson's door, Mr. Torenson was coming out of the office, and he stopped Mr. Torenson and was talking to him and introduced the two Chinamen to Mr. Torenson.

Q. Did you overhear the conversation? [136]

A. I wasn't close enough to overhear it, but I did see them shake hands.

Q. Did you speak to Mr. Torenson on Wednesday morning?

A. I did.

Q. And where was the conversation held?

A. Right by the printing press.

Q. Were you working there?

A. Yes.

Q. Anybody else working on that press?

A. Mr. Hughes.

Q. Was he present when you spoke to him at that time?

A. Yes.

(Testimony of Robert Anger.)

Q What was the subject of this conversation?

A. I asked Mr. Torenson in this way—I called him Stan. I said, "Stan," I says, "we boys have organized with the Weighers and Warehousemen's Union, which is affiliated with the I. L. A., and we want to go tonight to be initiated, and we want to get off at 4:30 so we can go home and get cleaned up and be at the hall by eight o'clock."

He said, "All right, Bob, thank you for telling me. That will give me a change to arrange my work."

That was all that I said at the time.

Q. At that time was anything said to him about the night men getting off?

A. About the night men? [137]

Q. Yes.

A. No.

Q. At that time?

A. Not right at that time. It was later on in the day, it was just right at the lunch hour that I mentioned about the night men to him, and that was in his office and I was alone.

Q. Do you remember the time of the first conversation you had with Mr. Torenson?

A. Eight-thirty in the morning.

Q. And the second conversation was when?

A. Right at noon.

Q. And in Mr. Torenson's office?

A. Yes.

(Testimony of Robert Anger.)

Q. Now, what was said at that time?

A. I told Mr. Torenson that the men who were working on nights would want to go to the meeting, but they would come back after the initiation was over and resume their night duties, which I thought would be about 10 o'clock.

Q. What did he say to that?

A. He said that was all right. That was all that was said.

Q. Did you speak to him again on Wednesday?

A. I did.

Q. About what time?

A. Three-thirty in the afternoon.

Q. Where were you at that time? [138]

A. Right by the printing press.

Q. Anybody else there at the time?

A. Mr. Hughes.

Q. What was said at that conversation?

A. A rumor had come to me, after the lunch hour, that any of the boys who were wearing buttons and who attended this meeting that night to become initiated would be fired. I asked Mr. Torenson if he had made that statement.

Q. Do you know where you heard this rumor?

A. Well, you know how rumors travel; they come from one to the other.

Q. You don't recall who told you?

A. No, not now.

Q. Go ahead. What was said?

(Testimony of Robert Anger.)

A. I asked him that question and he said, no, he had made no such statement.

I said, "Did the statement come from Mr. Huddleson to you that any of the boys would be fired if we attended that meeting?" He said, "No, it did not."

That was all of that.

Q. Did you tell the men that you had—strike that—Did you feel that you had received definite permission from Mr. Torenson to have the men attend the meeting?

A. I did. [139]

Mr. St. Sure: I take it that is drawing conclusions and, perhaps infringing on the Examiner's proper function in the proceeding.

Mr. Edises: I will strike that.

Q. (By Mr. Edises) Did you tell the men that day that you had obtained Mr. Torenson's permission for them to leave early so they could go to the meeting?

A. I did.

Q. Who did you tell?

A. I told a number of the boys and told them to pass the word to the others.

Q. Do you remember when you first passed out that information?

A. Well, that information was passed out early in the morning.

Q. And did you tell them that Mr. Torenson had said it was O. K. for the men to leave early?

A. He had told me.

(Testimony of Robert Anger.)

Q. By the way—

A. (Interrupting) That is, he signified his willingness.

Q. When did you tell the night men about the meeting that night?

A. They were told that morning.

Q. About what time?

A. I would say around nine o'clock. [140]

Q. Did you tell any of them?

A. Yes.

Q. Do you remember who you told?

A. Larry Doyle.

Q. Who else?

A. Al Pio.

Q. Anybody else?

A. I told them to tell the others that were working with them.

Q. Was that just as they were getting off shift that day?

A. Yes.

Q. What was your purpose in asking Torenson if the day men could get off at 4:30? I thought the meeting wasn't going to be held until eight o'clock?

A. Well, naturally when a man is working all day long he wants to get home in time to get cleaned up. He doesn't want to go down there in his working clothes.

Q. Well, where did the men live?

A. They are scattered all over in various, different sections of the city. I don't know where they all live. I know I had a long ride myself.

(Testimony of Robert Anger.)

Q. Where did you live with reference to the plant, how far?

A. I should say it was around five and one half miles.

Q. Do you know whether any of the men lived in Hayward or San Leandro? [141]

A. Yes.

Q. Do you know any of the men who do live there?

A. I know one named Connie Martin, one of our boys.

Q. Well, what happened at 4:30 on Wednesday?

A. At 4:30 all the boys came into the warehouse, came from across the street from the Stokely Warehouse, and—

Q. (Interrupting) By the way, who told the Stokely men?

A. I told some of them.

Q. About the meeting that night?

A. Yes.

Q. And likewise about getting off at 4:30?

A. Yes.

Q. When you spoke to Torenson did you ask about the Stokely men as well as the Santa Cruz?

A. No.

Q. Why didn't you?

A. I didn't think it was necessary.

Q. Can you explain that statement?

A. No, I don't think I can, no more than I took it for granted.

(Testimony of Robert Anger.)

Q. It was your undertanding that the Stokely and Santa Cruz men were really one unit, is that correct?

Mr. St. Sure: I do not want to be suggesting that the questions you have been asking are leading, because I do not want to make technical objections, but I think the last question was rather leading. [142]

Trial Examiner Traynor: Reframe the question, Mr. Edises.

Q. (By Mr. Edises) What was your—Strike that question, the one I just started. Didn't you have any reason at all for not specifying the Stokely men? Can you explain what your feeling was at the time?

A. Well, I guess I just simply took it for granted that the Stokely men were organized with us and we were practically one, working back and forth together, and if the Santa Cruz Warehousemen and they were in our organization, they were going too.

Q. Were any of the Stokely men wearing buttons?

A. They were.

Q. All right, now tell us what happened at 4:30.

A. At 4:30 we all congregated at the office to turn in our time cards and have them punched for the day at 4:30.

Q. And when you say "we" you mean who?

A. I mean all the employees in the two warehouses, about 40 in number.

(Testimony of Robert Anger.)

Q. Where did the Stokely men turn in their time cards?

A. Turned them in on the opposite side of the street, in the Stokely warehouse to their foreman.

Q. How do you know they did that at that time?

A. Because they were through with their work; they were rather slack and they were through at that time. [143]

Q. All right. Go ahead with your account of what happened at 4:30.

A. When we went to turn our cards in Mr. Torenson wasn't there. He had disappeared from his office and that is something that hadn't happened for a year and a half, that he had been foreman of the warehouse. He had always been there to receive our cards. This night he wasn't there. So we waited for two or three minutes and he didn't show up. So we finally put all of our cards on his desk and left them and went on our way.

Q. You left the cards on his deek?

A. That is right, on his desk.

Q. Did anybody try to find Torenson?

A. I don't think anybody went out to look for him. We waited a few minutes, possibly three or four, in the office.

Q. Then what did you do?

A. I went home and got ready for the meeting.

Q. Did you go to the meeting that night?

A. I did. We were initiated.

Q. Where was the meeting held?

A. We all met at the hall and then we went to

(Testimony of Robert Anger.)

the Teamsters' Hall just a block and a half away.

Q. You are referring to what hall?

A. The Weighers and Warehousemen's Union, 908 West Seventh street. [144]

Q. Were all of the warehousemen who had indicated their intention of joining the union present at the meeting?

A. They were.

Q. Any not present?

A. Not that I recall.

Q. How long did the meeting last?

A. Possibly two hours and a half.

Q. When you showed up at 4:30 to turn in your time cards, and you found Mr. Torenson was not present, did you feel that it was permissible for you to leave nevertheless?

A. Yes; I had left my card on his desk lots of times when he wasn't there.

Q. You had?

A. Yes, but only my individual card.

Q. Do you know whether any of the other men ever did that?

A. I believe they have, yes.

Q. You don't know?

A. I am not certain of it, but I think they have.

Q. What time did the meeting adjourn?

A. The initiation?

Q. Yes.

A. Around 10 o'clock, a quarter to 10.

Q. What did you do then?

A. Went home.

(Testimony of Robert Anger.)

Q. Do you know whether any of the night shift men returned [145] to work?

A. Yes.

Q. Did they tell you they were going to?

A. Yes.

Q. Who were they?

A. Larry Doyle and Al Pio was two that I know returned.

Q. Did you show up for work the following morning?

A. I did, at seven o'clock.

Q. And what was the situation that you found when you got there?

A. The gate was closed at the back where I generally entered; the side doors were closed where we entered from the street, blocked.

Mr. Edises: May we have a five minute recess, Mr. Examiner?

Trial Examiner Traynor: Yes, we will take a five minute recess.

(At this point a recess was taken after which proceedings were resumed as follows:)

Q. (By Mr. Edises) Did you try to get in?

A. I couldn't get anywheres near the door to get in.

Q. Why not?

A. There was guards in the street; the crowd was kept back from the doors; the crowd of men that went to work were all out in the middle of the street. [146]

Q. Who were present at the time, what men?

(Testimony of Robert Anger.)

A. All the men were in the street that worked there in the warehouses.

Q. And did you speak to anyone about going to work?

A. No.

Q. Why didn't you?

A. I couldn't get to the door. We were told to stay away.

Q. Who told you to stay away?

A. The guards.

Q. What did they say?

A. Well, they said there was a strike on and that we would have to keep out in the street, out of the way.

Q. Told you to keep out of the street out of the way—where did you stay?

A. On the opposite side of the street in a big vacant lot.

Q. Did you see any of the officials of the company that morning?

A. Yes, I saw Joe Remington, the general plant superintendent.

Q. Where did you see him?

A. Out in the street.

Q. Did you speak to any of them?

A. No.

Q. About how many guards were present?

A. Well, there was two of the regular watchmen that were on [147] duty there in the street; there were two special detectives—I don't know who they were—wearing badges sitting in a car.

(Testimony of Robert Anger.)

Q. Any of them armed?

A. That I couldn't say.

Q. Well, what did you and the men decide to do at that time?

A. Well, there wasn't practically any decision made right at that time. We milled around there in the street for a part of the morning and then the police ordered us away. We were forced up the street a block away from the plant.

Q. Did you, or any of the other men, make any effort to get in touch with the company officials?

A. I didn't.

Q. Who did, do you know?

A. I don't know whether any of them did or not.

Q. Was a picket line formed?

A. A picket line was formed later in the day.

Q. And where did that picket line stay?

A. Around 57th avenue.

Q. Where was the picket line with reference to the plant?

A. Well, the plant is down practically about two blocks from East 14th street, and they kept us up about a block away from the plant and let us picket from there out to 14th street. [148]

Q. What did you form the picket line for?

A. To stop trucks from going in and out, telling them there was a lockout.

Q. What do you mean by "stop trucks"? Did you intend to physically stop them?

A. No, just hail them and tell them.

(Testimony of Robert Anger.)

Q. Do you know whether any trucks failed to go through the picket lines?

A. They did.

Q. Was that on account of the application of physical force by the pickets?

A. Oh, no.

Q. Under what circumstances did they fail to go through the lines?

A. Some of them were being manned by union drivers. As soon as they learned there was a lock-out at the plant they turned around and went away.

Q. Do you know of any instances yourself of that refusal to go through the lines?

A. Do I know of instances?

Q. Yes.

A. Yes.

Q. Can you cite them specifically?

A. No, I can not.

Q. Do you know of any Santa Cruz products that were held [149] up, kept out of shipment as a result of the establishment of the picket lines?

A. I know that the trucks that were operating for the Santa Cruz Company were held up.

Q. Were those trucks that normally carried the products out of the state of California?

A. No, they were trucks that were hauling to the wharves.

Q. Hauling to the wharves?

A. From the plant to the wharves.

Q. Do you know whether there was any stoppage of Santa Cruz or Stokely shipments as a re-

(Testimony of Robert Anger.)

sult of—By the way, let me pass that question for the present. Was the Santa Cruz plant declared unfair, or in any way marked out by the union or the I. L. A.?

A. It was.

Q. Exactly what was done?

A. The teamsters were called upon.

Q. What?

A. The Teamsters' Union.

Q. What action did the union take as to this refusal to permit the men to return to work?

A. Pulling drivers off of trucks who attempted to go in there.

Q. What did you say?

A. Pulling the union drivers off of trucks. [150]

Q. When you use the word "pulling" do you have reference to physical handling?

A. Oh, no.

Q. Well, what do you mean by that word?

A. Simply calling them to the hall, I presume.

Q. Was any official action or declaration made by the I. L. A., or the Warehousemen's Union in regard to Santa Cruz?

A. That I couldn't say at that time.

Q. Do you know whether any Santa Cruz goods were held up at the wharves?

A. I do.

Q. When and where, and what goods?

A. Well, just the exact dates I couldn't give you, but I saw a lot of the goods stacked in the wharves myself.

(Testimony of Robert Anger.)

Mr. Edises: Just a minute. This can be off the record.

Trial Examiner Traynor: Off the record.

(Discussion off the record.)

Q. (By Mr. Edises) What goods did you see held up at the wharves after the lockout?

A. What kind of goods?

Q. Yes, what goods?

A. Spinach, pork and beans.

Q. And did you notice the destination of those goods as it appeared on the cartons?

A. No, I did not at that time. They were simply marked as [151] hot cargo and passed them by.

Q. How long did that cargo stay on the wharves?

A. I think it laid there, some of it, for three or four weeks.

Q. Now, what do you know about it—I want to know what you know of your own knowledge.

A. I can't be definite because I didn't see it placed in there, and didn't see it go out; but I saw the same stacks of goods lying in the same place for a period of two weeks, I know personally.

Q. Was that an unusual occurrence? I mean, were the goods ordinarily stacked and remained on the wharves for that period of time?

A. No.

Q. How long did they usually stay on the wharves after set there?

A. Sometimes not more than a day.

Q. Have you had any conversations with any of the officials of the company since the lockout?

(Testimony of Robert Anger.)

A. I have had no conversation, but I heard a little conversation.

Q. I am not interested in what you heard.

A. I was present at the time.

Q. All right. Who was present at that conversation?

A. Mr. Woods and myself. [152]

Q. And who else?

A. Mr. Huddleson.

Q. And when was this conversation?

A. The date I couldn't give you; but it was just two or three days after the lockout.

Q. Where did it take place?

A. Right in front of the plant.

Q. Were you on picket duty at the time?

A. I was.

Q. What was said and done at that conversation?

A. Mr. Woods came to me and we asked permission of the police to go through the lines. He wanted to see Mr. Huddleson. He was the business agent. I walked down with him. Mr. Huddleson was sitting on the running board of a car out in the street, smoking, at the time.

Mr. Woods went up and asked him if he considered the agreement that had been mailed him and if he would consider taking the men back.

Q. What agreement are you referring to?

A. I am referring to the union agreement that was mailed Mr. Huddleson, I believe, a few days before we had our initiation meeting.

Q. You mean the proposed agreement?

(Testimony of Robert Anger.)

A. Yes.

Q. That was mailed to Mr. Huddleson before the union ini- [157] tiation meeting?

A. Yes.

Q. Go ahead with your account.

A. Mr. Huddleson made this statement: that he would positively have nothing to do with the union, nor let a union be organized at his plant. That was all that I heard. We left him.

Q. Any other conversations?

A. None whatever.

Q. Have you a list of the men who signed the applications for membership in the union?

A. No, I have not.

Q. Didn't you keep any record of them at all?

A. I did at the time but since that time it has been destroyed, lost. They have it, though, in the union.

Q. I show you a bundle of papers, each of which is headed, "International Longshoremen's Association, Local 38-44, Weighers, Warehousemen and Cereal Workers," and ask you whether you have seen these before.

A. (Examining applications) All of them.

Q. What are they?

A. Applications to become members of the union.

Q. Did you hand those to the men to be filled out?

A. I had them in book form and as they were filled out and the money paid over I turned the money and the applica- [154] tion blanks——

(Testimony of Robert Anger.)

Mr. St. Sure (Interrupting): Just to shorten the matter, if you wish to read the face of one of those applications, and then have Mr. Anger call off the names that signed them, perhaps it will shorten the matter. We have no technical objection, or particular objection to the method of putting the information in that you apparently want in the record.

Mr. Edises: Thank you. I will read one of these applications into the record. All of the others are identical.

At the top is the date.

BOARD'S EXHIBIT NO. 1.

"8-8-1935

"International
Longshoremen's Association
Local 38-44
Weighers, Warehousemen and Cereal Workers
Phone GArfield 6990

"I, Homer White do hereby make application to your honorable body for membership. Should my application meet with your approval, I promise a

(Testimony of Robert Anger.)

faithful obedience to the Laws, Rules and Regulations of your Association.

Am employed by Santa Cruz

Foreman's Name Torensen

How long employed 1 month [155]

My address 1622—13 Ave. Oakland

My age 23 No. 2175

Voucher Ivo Rocha Book No. 0-278

Voucher ..... Book No.....

Voucher ..... Book No....."

Q. (By Mr. Edises) Will you read off the names of the persons whose applications appear there?

Mr. St. Sure: I further suggest, in addition to the name, that you also read the name of the employer. Some of them read Stokely and some of them read Santa Cruz. I suggest he read the name of the man and then read the name of the employer as listed there.

A. Clifford Algrava, Santa Cruz Fruit Packing Company; Pasqual Arieta, Santa Cruz Fruit Packing Company; Manuel Blanco, Santa Cruz Fruit Packing Company.

Q. (By Mr. Edises) I suggest that you just say, to shorten it, instead of "Santa Cruz Fruit Packing Company," "Santa Cruz," or "Stokely" as the case may be.

A. Nick De Carlo, Santa Cruz; Orville Gardner, Santa Cruz; Frank Granada, Santa Cruz; Rufus Hughes, Santa Cruz; Connie Martin, Santa Cruz Gerald Olivera, Stokely; Joe Pepitone, Santa Cruz;

(Testimony of Robert Anger.)

[156] W. Bedford, Stokely; Lee Henry, Santa Cruz; John Reckling, Santa Cruz; E. G. Resburg, Santa Cruz; Ivo Rocha, Santa Cruz; George Rose, Santa Cruz; Wm. Blackwell, Santa Cruz; Lester Scott, Santa Cruz; John Valin, Stokely; Fred Venturi, Stokely; Dave Rodrigues, Santa Cruz; Larry Doyle, Santa Cruz; George Costa, Santa Cruz; Jack Baker, Santa Cruz; Robert Anger, Santa Cruz; Mannie Frates, Stokely; Luther Dolin, Santa Cruz; John W. Joseph, Santa Cruz; Joe Carmo, Santa Cruz; Alfred Pio, Santa Cruz; Frank Phillips, Santa Cruz; Kenneth Toresen, Santa Cruz; F. Ellis, Stokely. That is all. [157]

Mr. Edises: I offer these applications in evidence as Board's Exhibit No. 1.

Trial Examiner Traynor: They may be received as Board's Exhibit No. 1.

(The applications referred to, 34 in number, were received in evidence and marked Board's Exhibit No. 1, Witness Anger.)

Mr. Edises: May I be permitted to excuse Mr. Anger now, subject to recalling him for possibly one further matter which, I feel, may appear in better order and better sequence at a later time? Have you any objection?

Mr. St. Sure: No objection.

Trial Examiner Traynor: So ordered.

Mr. Edises: Just a minute! Is there any cross examination?

Mr. St. Sure: I prefer to cross examine him after his testimony is completed.

(Testimony of Robert Anger.)

Mr. Edises: Then I will withdraw my request to recall him for additional new matter at a subsequent time.

Mr. St. Sure: Later on, if you desire, and if something comes along and you want to recall him, there will be no objection to your doing so, as far as I am concerned, if it is agreeable to the Examiner.

Trial Examiner Traynor: All right, proceed with the cross examination.

Mr. St. Sure: I am in the position, Mr. Examiner, and [158] I will so state, that my cross examination is not deemed to waive our previous objections, and so forth.

Trial Examiner Traynor: That is right.

Cross-Examination.

Q. (By Mr. St. Sure) You mentioned the fact that following the establishment of the picket line out there near the Santa Cruz plant, that you personally saw certain merchandise from the Santa Cruz Fruit Packing Company which was on the docks for a period of two weeks, to your knowledge?

A. Yes.

Q. Do you know what was the occasion for it remaining there for that period of time? You used the expression, "Hot cargo." Will you just explain, for the purpose of the record, just what you understand hot cargo to be?

A. Cargo that should not be handled by stevedores simply because of the unfair conditions at the plant in which it was put up.

(Testimony of Robert Anger.)

Q. In other words, as I understand the situation from your answer, and perhaps from some of my own information on the subject, the stevedores —By the way, which dock was it that you saw, or which terminal was this merchandise that you refer to?

A. Encinal.

Q. And the stevedores who were employed there, and the men who handled cargo at Encinal Terminal, are union men? [159]

A. They are.

Q. And do you know what union they belong to?

A. What union?

Q. Yes.

A. The I. L. A.

Q. And do you know what local of the I. L. A.? Is it the same local that you men joined at the Santa Cruz plant?

A. Some of them, the warehousemen, 38-44.

Q. They belonged to Local No. 38-44?

A. The stevedores belonged to 38-79 in San Francisco.

Q. But the employees who handled the movement of the cargo on the docks at Encinal Terminal were members of 38-44, a local or branch of the I. L. A., the International Longshoremen's Association?

A. Not the stevedores. The stevedores were in San Francisco.

(Testimony of Robert Anger.)

Q. I will put it this way: Both the stevedores and the warehousemen belonged to locals of the I. L. A.?

A. Yes.

Q. Some of them, the warehousemen, were members of 38-44?

A. Yes.

Q. Any stevedores who came from across the bay, and did a portion of the operation of handling cargo, belonged to 38-79?

A. That is correct.

Q. And you say those men at the terminal refused to handle the merchandise from the Santa Cruz cannery? [160]

A. Yes.

Q. During the period of this time that you had the picket lines established at the Santa Cruz cannery?

A. Correct.

Q. Do you know under what circumstances that cargo was finally moved? Do you know that it was moved?

A. I don't know that it was moved, but it disappeared from the warehouse because I have worked there since it has been shipped.

Q. You do know, don't you, Mr. Anger, that Judge Sloss, as Federal arbiter, directed that that cargo be moved, and stated that the refusal to move it was a violation of the agreement, of the award of October of 1934?

A. I read his statement in the paper.

(Testimony of Robert Anger.)

Q. And you were familiar with that conclusion Judge Sloss arrived at?

A. Yes.

Q. Were you present at any union meeting, Mr. Anger, or other meeting at which the policy was discussed or determined upon to declare the cargo of the Santa Cruz Fruit Packing Company to be hot cargo?

A. I was not.

Q. Now, you said that certain trucks going in and out of the Santa Cruz plant, during the time the picket line was established there, that the drivers declined to go past the [161] picket line.

A. Yes.

Q. Do you know whether any of those men who declined to go past the picket line were threatened by any of the pickets there with violence or harm to themselves personally if they did go by the picket line?

A. I was on that picket line from the beginning until the end, three and four times a day and I never heard any threats made by any one of the Santa Cruz men against any driver. They would simply flag them and tell them there was a lockout. We were trying to conduct peaceful picketing and we were warned to do so by the police.

Q. Do you know personally, Mr. Anger, of your own knowledge, of any incidents, wherein the driver from the El Solyo Ranch drove his truck into the Santa Cruz plant, and as he was leaving there rocks were thrown at him?

(Testimony of Robert Anger.)

A. The only thing that I know about the conditions that existed in that case was what I read in the newspaper.

Q. Then I take it, from your statement, that you do not know of your own knowledge of any instance in which any violence occurred?

A. Absolutely, not one.

Q. About how many men were present there ordinarily on this picket line during the time the picket line was maintained? Were there any particular number? [162]

A. We tried to work about 15 to 18 men on a shift. Those shifts were 12 hours.

Q. And the picket line was maintained 24 hours a day?

A. Yes, sir.

Q. Who was in charge of the pickets? Was anyone particularly designated to be in charge of the pickets?

A. There was captains designated from time to time, from day to day.

Q. Each day a different man, or somebody in particular?

A. Not every day a different man. We tried to run them weekly; various different men were appointed captains of the pickets.

Q. Did the pickets who were there, to your knowledge, talk with any of the other employees, that is, the people working in the cannery as they came to work or left their work?

A. Not to my knowledge.

(Testimony of Robert Anger.)

Q. Pardon me?

A. Not to my knowledge did I ever see any of the other men talking to them, but I personally talked with some of them.

Q. You talked with some of them?

A. I did.

Q. Did you ever endeavor to persuade any of them not to continue working there under the conditions existing at the time?

A. I did. [163]

Q. And those people that you talked with, were they people who worked in the cannery?

A. One was a watchman, Gene Richie.

Q. Any others?

A. Yes, the can stacker, Jimmy Fleeman.

Q. Now, you mentioned the fact that trucks operated by the Santa Cruz Fruit Packing Company were unable to go in and out during the time, that is, did not go in and out during the time that the picket line was there. Did I understand you correctly in that?

A. In one way, yes. The trucks, some of them went out the first few days, and from time to time they kept taking the drivers off until finally it got to where it was practically zero and there was no trucks moving.

Q. Now, were these men that you say—you used the expression "were taken off," and I am assuming that by that you mean, as you did on your direct examination, not by physical act, but by mere persuasion and conversation. Were any

(Testimony of Robert Anger.)

of these men taken off these Santa Cruz trucks men who were not members of the union, of any union, as far as you know?

A. That I couldn't say.

Q. Did you yourself talk to any of the men who were driving Santa Cruz trucks?

A. I did not.

Q. How many trucks of the Santa Cruz Fruit Packing Company [164] were operating, do you know, prior to the time this difficulty arose?

A. I couldn't say exactly, but I think——

Q. (Interrupting) I mean, was it two or three, or two or three dozen?

A. I understood that Hartman had seven trucks he was operating.

Q. Who was Hartman?

A. I believe he was a contractor for Mr. Huddleson's hauling. He had been there a long time hauling.

Q. Is it your understanding that the hauling operation was under contract to Mr. Hartman?

A. That is what I understood.

Q. And what did you see those trucks being used for? I mean, what type operation did those trucks perform?

A. Mostly hauling the finished product to the plant, that is, from the plant to the wharves.

Q. Were those trucks used at all in bringing in fruit and vegetables from the field to the plant?

A. They were, yes, hauling spinach and hauling beans.

(Testimony of Robert Anger.)

Q. And during the time this picket line was maintained out there, you say the operation of those trucks ultimately ceased?

A. They were hampered, yes, to a great extent.

Q. You say the cessation from that activity, or the stopping [165] of those trucks, as you understand it, was because the men who were driving them declined to drive them any longer?

A. The majority of the drivers of those trucks, I believe, were union men and they were called off through the teamsters' organization.

Q. Now, were other trucks, other than these that were referred to, these that have been referred to as Santa Cruz trucks, stopped as they were going in or out of the Santa Cruz plant?

A. They were.

Q. What type of trucks were those? I mean, what were they carrying? What was the nature of their business, if you recall?

A. They were hauling in fruit from the ranches.

Q. And were those men, do you know, who were driving those trucks from the ranches, members of any union?

A. I don't think they were; I don't know. They were farmers, I believe.

Q. They were farmers?

A. I believe so.

Q. Some of them were driving their own trucks bringing in their own products, is that your understanding?

(Testimony of Robert Anger.)

A. I can't say, but I heard they were farmers. That is all I know of them.

Q. Do you know what argument was used to persuade those [166] farmers from coming in with their own fruit or vegetables to the Santa Cruz plant?

A. There was no argument used. They were simply flagged and told there was a lockout at the plant, and asked them not to cross the picket line.

Q. Do you know whether any of them said they wanted to go in anyway?

A. I believe they did go in.

Q. And what was said to them?

A. Nothing more could be said to them. They had police protection.

Q. Did they need it?

A. I don't——

Mr. Edises (Interrupting): Just a moment! I object to that.

Trial Examiner Traynor: I think that can be stricken out.

Q. (By Mr. St. Sure) Well, were any of those men, to your knowledge, these farmers who came in with their products, or with products, told not to come back, by any of the pickets?

A. Not that I know of.

Q. Now, were there any delivery trucks or wagons taking merchandise in, say, to the cafeteria, were any of those trucks stopped, milk and bread trucks stopped?

A. Yes. [167]

(Testimony of Robert Anger.)

Q. And on the same basis the pickets called their attention to what you term the lockout, and asked them not to go through?

A. I flagged a number of them myself, yes.

Q. Now, at the time this difficulty occurred, which you referred to as a lockout, was the Santa Cruz Fruit Packing Company working 24 hours a day, do you know?

A. Yes.

Q. And for how long a period of time had it been working 24 hours a day? Do you recall how long—I mean your best judgment—whether a month, or a week or two?

A. I think it was running around a month or so.

Q. About a month?

A. Yes.

Q. They don't operate the year round 24 hours a day?

A. No.

Q. Just certain seasons when they do?

A. Yes.

Q. This particular season, and the particular reason for the operation, being the day run and the night run at that time, was what, what season was it, peaches?

A. Peaches, yes.

Q. And at the same time were they canning pork and beans? Isn't that a rather continuous operation, or wasn't it at that time? [168]

A. That runs from month to month.

Q. What?

(Testimony of Robert Anger.)

A. I say, it seems to run from month to month, pork and beans.

Q. That was running day and night also?

A. Yes.

Q. Now, you have mentioned that trucks came to the plant of Santa Cruz, and goods were loaded onto those trucks to be taken to the northwest, Seattle, and the state of Washington, and so on. Those trucks weren't Santa Cruz trucks, like these other ones we have been talking about, but they were haulers, in the business of hauling merchandise?

A. Up and down the coast, yes.

Q. I assume that you have no personal information concerning the nature of the actual transactions when the goods were sold, that is, the contract of sale, between the Santa Cruz Company and its purchasers?

A. Absolutely none.

Q. Now, you related a conversation that you had with Mr. Woods, or rather, that Mr. Woods had with Mr. Huddleson?

A. Yes.

Q. And when you were present?

A. Yes.

Q. And you say that it was a day or two after the picket line had been established? [169]

A. Yes.

Q. And up to that time had you talked with Mr. Torenson, or with Mr. Huddleson, or anybody else connected with the Santa Cruz plant, that is, any

(Testimony of Ernie Reich.)

of the officials, or the foreman or the superintendent, or any person there about the strike conditions?

A. None of them.

Q. On this occasion you say you asked the police if you could go through the lines and go down to where the office was, to talk to Mr. Huddleson?

A. Yes, sir.

Q. And what is your recollection of that conversation as to what Mr. Woods said and what Mr. Huddleson said?

A. Mr. Woods asked him something in regard to the agreement that had been mailed him, and Mr. Huddleson made the statement that he would positively have nothing to do with the union. The conversation was very short and very brief. And then we were on our way.

Q. That agreement that is referred to, had you seen that agreement?

A. I had not.

Q. Did you know what that agreement contained at the time that Mr. Woods mentioned it to Mr. Huddleson?

A. No. [170]

Q. Did you know what demands were made in behalf of the men, that is, yourself and the other employees, in this agreement or proposed agreement?

A. I don't think there was any demands made. I think the agreement asked for wages and hours.

(Testimony of Robert Anger.)

Q. I don't want you to interpret it in an unpleasant sense when I say "demands". I do not mean that. Did you know what the terms of the proposed agreement were?

A. They asked for an eight hour day, 62½ cents an hour, and overtime.

Q. Had you, or had any of your fellow-employees to your knowledge, discussed those requests, or those proposed terms with the management, or anyone connected with it?

A. I don't think they had. I hadn't.

Mr. St. Sure: Shall we recess at this time?

Trial Examiner Traynor: Yes, until 2 o'clock.

(Thereupon, at 12 o'clock noon a recess was taken until 2:00 o'clock p. m.) [171]

After Recess

(The hearing was resumed at 2:00 o'clock p. m. pursuant to the taking of recess.)

Trial Examiner Traynor: Are counsel ready to continue?

Mr. Edises: Ready.

Mr. St. Sure: Ready, Mr. Examiner.

Trial Examiner Traynor: Mr. Anger will take the stand.

Robert Anger, the witness on the stand at the time of recess, resumed the stand and testified further as follows:

Cross Examination (Continued)

Q. (By Mr. St. Sure) Mr. Anger, you described in some detail this morning the work in the ware-

(Testimony of Robert Anger.)

house, or the warehouse department of Santa Cruz. Could you tell us, as the cans come off the machine, whatever term you apply, describe the process. For instance, you have the pork and bean line, and various lines, and at the conclusion of the operation you have a completed can except it is to be labeled and stacked, and so on, after that; is that correct?

A. You mean after they come from the cookers and retorts?

Q. Yes.

A. Yes.

Q. Now, as those cans come from the cookers and the retorts they are placed in baskets?

A. Some of them are in baskets and some of them are in [172] trays and are stacked and cooled.

Q. They are taken from the cannery proper into the warehouse?

A. When they are cooled.

Q. And that is a continuous operation, from the machine to the place where they stand to be cooled and then moved on to the warehouse, is that correct?

A. For the day's run, yes.

Q. On this occasion, this evening when the meeting was to be held, what, if any, effect would the absence of the day crew from say 4:30 in the afternoon on, and the night crew until say 10 o'clock in the evening, have upon the operation of the remainder of the cannery? Would it have had any effect?

(Testimony of Robert Anger.)

A. The warehousemen had nothing to do with the cannery. They only received the cans after they came from the cookers and retorts and cooled and trucked into the warehouse.

Q. And the very removing of those cans, after they were cooled, was a part of the operation to clear the cannery of the cans as they arrived there?

A. That was done during the morning. The floor was cleared for the day's run; and the following morning that day's run was cleared.

Q. What did the night shift in the warehouse do? Did they move any cans at all from the cannery into the warehouse?

A. They were labeling pork and beans as they came from [173] the cannery into the warehouse.

Q. Was there any actual movement of cans while the night shift was at work there at about that time of the year, from the cannery into the warehouse?

A. Yes.

Q. And your thought would be that if the crew in the warehouse were away, it would mean the cans would wait until they came back before they were moved into the warehouse; is that it?

A. I believe I explained that in my former statement, that is, that Mr. Torensen said it would give him a chance to arrange his work, and I presume that was what was meant.

Q. That is, you thought by that he meant he would get somebody else to take your places and get

(Testimony of Robert Anger.)

some one else to move them during the interval?

A. Yes. The reason I make that statement is that there was a number of the can stackers who could work on the machines and label.

Q. Well, on this afternoon that you say you had these conversations with Mr. Torenson, when you and the others there left at 4:30 in the afternoon, you say no effort was made to locate Mr. Torenson at that time?

A. We didn't go out to look for him, no, because we didn't know where he was.

Q. And the time cards were simply left on his desk, a [174] group of them, all of them?

A. Yes.

Q. Now, on the following morning you say you went back to the plant to report for work about 7 o'clock?

A. 7 o'clock.

Q. Was that your usual hour for going to work?

A. Yes.

Q. And when you arrived there did you find both the day and the night crew there?

A. I don't recall as to the night crew because there were a number of men in the crowd; but I do recall all the day crew.

Q. And you say there were two regular night watchman there and you saw two other men with stars or badges sitting in an automobile?

A. Yes.

(Testimony of Robert Anger.)

Q. Did you, or any one else there, ask to talk with Mr. Torenson, or Mr. Huddleson, or any one else?

A. I didn't, because we couldn't get to see them. We couldn't go near the place. We were ordered away.

Q. Did you make the request of any one that you wanted to see or talk with them?

A. There wasn't any one to make the request to.

Q. What kept you away? Was there some one there?

A. There were guards there. [175]

Q. Armed, you say?

A. Armed, and also policemen.

Q. I thought when Mr. Edises asked the question, if the men were armed, you said you didn't know.

A. I am not certain as to that. I will recall that statement; but there were guards.

Q. You knew these men were the regular watchmen, didn't you? You had worked with them, and had seen them around there?

A. I knew two of them were the regular watchmen.

Q. Did you ask them, or any one else in your presence ask them, to send word to the management that you would like to talk to them?

A. I didn't hear any one make any statement to them, ask them anything at all.

(Testimony of Robert Anger.)

Q. This agreement that you say was mailed to Mr. Huddleson, or to the Santa Cruz Fruit Packing Company, had you and the other men working with you gone over that agreement, or read it?

A. No, we had not.

Q. Whose agreement was it? I mean, whose idea was it? Did it come from the men or some one else?

A. It came from the union.

Q. From the union?

A. Yes. [176]

Q. Had you had any meeting of the men yourself, and the others employed there, to discuss what that agreement contained?

A. We discussed it with our business agent, as to hours and wages and overtime.

Q. When was that?

A. Several days previous to the lockout.

Q. Did you discuss with your business agent the matter of any provision in the contract requiring that all persons employed belong to the union, or be discharged?

A. I did not.

Q. Did you know that the contract, or the proposed agreement, contained such a provision?

A. I couldn't have known it, because I didn't read it.

Q. Now, between this first day that you say the morning you reported back to work following the meeting, and this time two or three days later when you say you were present when Mr. Woods talked

(Testimony of Robert Anger.)

with Mr. Huddleson, did you, or any one that you know of your group among the men, say any word or ask to make any request to talk with the management, or any one connected with it, concerning the situation?

A. We did not. It was supposed to be done by our representatives, our business agent. He represented us as a body.

Mr. St. Sure: I think that is all. [177]

Redirect Examination

Q. (By Mr. Edises) Do you know if Santa Cruz cargo is still hot?

A. If it is now?

Q. Yes.

A. It is with the union men, I believe, as far as purchasing it over the counter is concerned. I believe it is moving on the wharf, some of it.

Q. That is what I am referring to. Do you know whether the stevedores, for example, are now handling Santa Cruz cargo?

A. I think they are.

Q. Are the can stackers members of your union?

A. They are not.

Q. Did Mr. Torenson say anything to you, during your conversations with him in regard to the men getting off to go to the meeting, about who he would get to take the places of the men?

A. No, nothing was said at all.

Q. Did he say, however, that he would be able to make arrangements?

(Testimony of Robert Anger.)

A. When I told him this he thanked me and said that that would give him a chance to make arrangements for the work. That was all that was said.

Q. About how many men are needed for the job of trundling the cans from the cannery into the warehouse? [178]

A. About how many men?

Q. How many men are normally used for that job?

A. One man was doing the most of it with an electric truck.

Q. When you came to the plant the morning after the lockout what, if anything, was said by these watchmen to you?

A. There was only one of the watchmen that I spoke to, Gene Richie.

Q. He told me to keep away from the plant. The police on duty also told me.

Q. Did the members of the union know what demands were going to be made in connection with wages and hours?

A. Yes, they knew.

Q. When did the men discuss that?

A. We had talked it over a couple of weeks before that time.

Q. Was that at a regular meeting?

A. No, just a meeting among ourselves.

Q. Was the business agent of the union authorized to carry on negotiations for you?

A. He was.

(Testimony of Robert Anger.)

Q. Was he authorized to submit a proposed agreement?

A. To Huddleson?

Q. Yes.

A. Yes.

Mr. Edises: That is all. [179]

Mr. St. Sure: No further questions.

Mr. Edises: That is all.

(Witness excused.)

Mr. Edises: Mr. Reich.

ERNIE REICH,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Edises) What is your name?

A. Ernie Reich.

Q. Are you married?

A. Yes.

Q. Any children?

A. One.

Q. How old?

A. A year and a half.

Q. Where do you live?

A. 1839 70th Avenue.

Q. Were you employed by Santa Cruz or Stokely?

A. Santa Cruz.

Q. When did you first go to work there?

(Testimony of Ernie Reich.)

A. I first went to work in Santa Cruz for them, and then was transferred up here when he bought his new plant down at 57th Avenue. That was about three and one-half years ago.

Q. And what was your job at the Oakland plant of the Santa Cruz? [180]

A. Laborer.

Q. And were you later promoted to a different job?

A. I was.

Q. What was that?

A. Assistant warehouse foreman.

Q. When was that promotion?

A. About two years ago.

Q. And have you since that time, up until the recent lockout, been employed as assistant warehouse foreman at the Santa Cruz plant?

A. I have.

Q. Will you describe the nature of your duties and work as an assistant foreman?

A. I had charge of all the men employed in the warehouse. I took orders from our foreman, Mr. Torenson, and carried out his plans. I checked the boys in at times, and I checked them out at times.

Q. What authority did you have with reference to the men?

A. I didn't have the authority to hire anybody or fire anybody.

Q. Who did the hiring and firing?

A. Mr. Remington.

(Testimony of Ernie Reich.)

Q. What were Mr. Torenson's duties in connection with the hiring and firing? [181]

A. He didn't have any authority to hire or fire until about a month before we were locked out.

Q. And at that time did he receive that authority?

A. Yes.

Q. And do you know whether he did any hiring or firing of men after that time?

A. He did, yes.

Q. Will you describe in detail the operations which are carried on in the warehouse, that is, from the time that the goods are received until the time that they go out?

A. Well, there are various ways. It all depends on what the product is. We have different operations on different varieties of fruits; pork and beans are a different set-up too.

Q. Let's take peaches, for example.

A. Peaches are trayed up on trays in the cooking room and trucked out by one man with an electric truck, to the warehouse to be cooled. After they are cooled——

Q. (Interrupting) How long does the cooling take?

A. Usually the next day, the following day; it takes about 24 hours. After they are cooled they are either stacked or labeled and shipped.

Q. Now, will you describe the process of shipping, that is, how that is carried out?

(Testimony of Ernie Reich.)

A. Off of the trays—if we didn't have enough stock to [182] fill our order, we usually labeled up all the stock we did have and held it over until it was complete, and then it was shipped. Other orders that were completed at the time, they were shipped at once.

Q. What means of transportation were used in shipping?

A. Cars, railroad cars and trucks.

Q. Was there a spur line up to the plant?

A. Yes.

Q. Do you know what line that was?

A. It is the Southern Pacific and Western Pacific, I believe.

Q. Do you know whether that spur line was owned by the company or by the railroad?

A. I don't know.

Q. Did you have charge of assigning the men to different operations?

A. I did.

Q. What was your practice in regard to assigning the men for jobs?

A. Well, they done almost all the jobs in the warehouse. I wouldn't keep one man on one job unless it was the labeling machine operator. He was the only man that I didn't change around to the various jobs.

Q. And all the other men, were they at various times assigned to trucking and loading? [183]

A. They were.

(Testimony of Ernie Reich.)

Q. Is the process materially different in regard to tomatoes?

A. No.

Q. Pork and beans?

A. Pork and beans, there is a difference.

Q. Will you describe that process?

A. Pork and beans are cooked in retorts and brought out in baskets into the warehouse, pushed in by the cook room force, and they are labeled right away and part of them are shipped and others are stored right there at the warehouse.

Q. Is any cooling period necessary, in the case of pork and beans?

A. No, not over 15 or 20 minutes.

Q. Did the cartons contain a statement of the destination to which they were going?

A. They did.

Q. Will you mention some of the places to which peaches were consigned?

A. One of our biggest buyers in peaches was the First National Stores.

Q. Where is that located?

A. In Boston.

Q. Can you state approximately what percentage of your peach crop, canned goods, was sent to the First National [184] Stores?

A. Out of about 300,000 cases we would ship about 25,000 or 30,000 cases to the First National Stores.

Q. And did that shipment take place over a period of time?

(Testimony of Ernie Reich.)

A. Yes.

Q. During approximately what period?

A. Well, in peaches it would be about a year. We would ship to them constantly.

Q. About how many cases per day of all products were placed in the movement for transportation?

Mr. St. Sure: Just a moment, if the Court please. I do not want to object to the form, but I feel that the assumption that any goods or merchandise were placed in transportation by the Respondent is assuming the very thing in issue here. There is no objection to the describing of the actual process of what was done, and the mechanics of it, but as to the legal effect, I take it that that is the thing that is before yourself as Examiner, and for determination by the Board.

Mr. Edises: I will redraft the question, Mr. St. Sure.

Q. (By Mr. Edises) About how many cases a day, of all products, were loaded into cars or trucks, or other means of transportation, during the busy season?

A. Does that include the Stokely warehouse and the Santa Cruz too? [185]

Q. Let's take first the Santa Cruz.

A. I would say on an average of 3,000 or 4,000 cases per day.

Q. And for how long a period did this last?

A. That is almost all year round.

(Testimony of Ernie Reich.)

Q. Returning for a moment to peaches. I take it that is your largest fruit crop?

A. Yes.

Q. About what period of time would normally elapse from the time the raw peaches were received at the plant until the time that they were trucked out into cars and trucks?

A. I would say about half of the pack wouldn't remain in the plant over a period of five days.

Q. Do you know how much of the peach crop was sent to points outside the State of California?

A. I would say 80 per cent.

Q. Will you name the chief points of consignment of peaches?

A. Practically the large cities in the East.

Q. Can you name some specifically?

A. Boston, New York, Chicago, Philadelphia, Connecticut—a lot of others.

Q. Do you know the names of some of the more important consignees of peaches?

A. First National Stores. [186]

Q. Boston?

A. Boston. Nation Wide Service Grocers, and I believe they are in Boston. Seeman Brothers, New York. Those are the main ones. Those are four or five of the biggest consignees.

Q. What was your largest vegetable crop?

A. Spinach.

Q. And do you know some of the points of consignment on cases of spinach?

A. Same places.

Q. Same places?

(Testimony of Ernie Reich.)

A. Yes.

Q. Can you state approximately what percentage of your spinach product was destined for points outside the State of California?

A. I would say about 90 per cent.

Q. How much?

A. About 90 per cent.

Q. Do you know any foreign ports that fruits or vegetables were sent to?

A. London, Manchester, New Castle, Moscow, Leith.

Q. During the canning year was there a pretty constant movement of your products to these foreign and out of state points, or was it confined to certain periods of the year, certain times? [187]

A. It was consigned to certain periods of the year.

Q. What time of the year was most of the stuff sent to foreign points?

A. Our export business usually lasted about a month; that is, our biggest season in export business, and that was in July.

Q. What means of transportation were used?

A. For export?

Q. For export.

A. Trucks at first.

Q. And will you describe the process by which these goods were started from the warehouse until they reached the final method of transportation?

A. They were loaded by trucks at our warehouse.

(Testimony of Ernie Reich.)

Q. By whom?

A. Our warehouse,—that is, by our warehousemen and shipped to the different terminals here in Oakland and San Francisco.

Q. Which terminals specifically?

A. Encinal and Howard Terminal, Port of Oakland, Ninth Avenue, McCormick Steamship Company.

Q. What happened after they reached the terminals?

A. They were stored there until sailing dates for certain vessels, they were assigned to.

Q. Do you know normally how long they were stored at these [188] terminals?

A. Not over three or four days.

Q. And then loaded directly from those terminals into the vessels?

A. Into the vessels, yes.

Q. About how much of your entire pack was shipped by water, in the manner you have indicated, during the year?

A. I would say 90 per cent.

Q. And of that, what percent was sent to foreign ports?

A. About seven or eight per cent.

Q. What is that?

A. Seven or eight per cent.

Q. Seven or eight per cent to foreign ports, and the remainder to where?

A. To eastern ports.

Q. On the Atlantic seaboard?

(Testimony of Ernie Reich.)

A. Yes.

Q. How about the Gulf?

A. Yes.

Q. Which Gulf ports, if you know of any?

A. I don't know any of them.

Q. Did the point of shipment, rather, the point to which the product was shipped always appear on the cases?

A. Yes.

Q. During the month of July 1935 what were your hours? [189]

A. I had all hours; usually worked eight hours at the least, and worked up to as much as 17 and 18 hours a day.

Q. Did you join the union?

A. I did.

Q. Why did you join?

A. To better my conditions.

Q. What—who first spoke to you about the union?

A. Mr. Anger.

Q. Do you remember when that was?

A. Along in July, sometime about the 15th of of July.

Q. Wasn't it rather unusual for an assistant foreman to join the union?

A. I don't know why it should be.

Q. When did you first receive your union button?

A. August 5.

Q. Was that on Monday?

(Testimony of Ernie Reich.)

A. Monday.

Q. What time did you go to work on Monday?

A. 7 o'clock.

Q. Did you speak to Mr. Anger that day?

A. I believe I did.

Q. Did you receive your button from him?

A. Yes.

Q. Anything particularly happen that day with reference to the union? [190]

A. We had a meeting by our employer about 6:30 in the evening.

Q. Who called that?

A. Mr. Huddleson.

Q. Who is he?

A. He is the general manager of the Santa Cruz Fruit Packing Company.

Q. How did you learn about the meeting?

A. We went out for supper and came back at 6:15 and Mr. Huddleson was out there and wanted all the boys to come together, and he wanted to talk to us.

Q. Do you know whether he called the Stokely men as well as the Santa Cruz men together?

A. Yes.

Q. Where was this meeting held?

A. In our warehouse.

Q. Santa Cruz?

A. Santa Cruz.

Q. At what time?

A. 6:30.

(Testimony of Ernie Reich.)

Q. What was the purpose of the meeting?

A. Mr. Huddleson heard that we had joined the union and——

Q. (Interrupting) Just a minute! Perhaps you had better tell us what was said and done at the meeting.

A. He came out and said that he heard that we had joined [191] the union.

Q. Now just a moment. Do you remember how many men were present?

A. About 35 or 40 men.

Q. And were all of these men wearing their union buttons?

A. No, they weren't.

Q. About how many of them were?

A. I think, I would say about half of them.

Q. Now go ahead and tell us what was said and done.

A. He said that he heard we had joined the union and wanted to know what we meant by it. He said if it was more money that we were looking for, why didn't we form our own body of men and come and see him personally instead of joining the union. And he said that he had known this for two weeks previous; that he wasn't sleeping either; that he went right out and got himself a contractor to do the work for, he said, 2/10th per cent less than we were doing it, so he didn't see any reason why he shouldn't give it to him.

Q. Did he say anything about——

(Testimony of Ernie Reich.)

Mr. St. Sure: (Interrupting) Can't you ask your questions without leading.

Q. (By Mr. Edises) Go ahead and relate the balance of the conversion.

A. He opposed us belonging to a union, because he said that he didn't want to take orders from any outsider and to [192] tell him how to run his business. He was opposed to our 62½ cents an hour that he heard we were asking for. He said he didn't want to be made the goat. He said that if we went out and organized the other 57 canneries in the State of California, he would be glad to pay $1 an hour, and that he wouldn't give a damn. That was about all that was said.

Q. Did any of the men say anything?

A. One of the fellows asked him why he didn't start paying 62½ cents an hour, and that the rest of the canners would all follow suit.

He answered by saying he wasn't going to be made the goat.

Q. Well, did he leave you with any kind of a proposition, or tell you anything about what he intended to do, or what you could do?

A. He told us he would give us a couple of days to think it over.

Q. Think what over?

A. Whether we wanted to work the same conditions, under the same conditions, and forget our union activities.

Q. Anything further said at that conversation as far as you can now recall?

(Testimony of Ernie Reich.)

A. That is all I can recall at this time.

Q. Did Mr. Huddleson use any strong language at that time? [193]

A. Well, yes.

Q. Well, what was it? Don't be afraid to say whatever he said.

A. I don't just remember—about what the hell it was—it was plenty strong at times.

Q. What did all the men do then after the meeting?

A. We resumed our work.

Q. Resumed your work?

A. Yes.

Q. Do you know Mr. Gomez?

A. I know him by sight, yes.

Q. Did you see him around the Santa Cruz plant on Monday?

A. No.

Q. What time did you go to work on Tuesday?

A. 7 o'clock.

Q. Did anything happen on that day with particular reference to the union or its activities?

A. No, nothing that I know of.

Q. Did you see Mr. Gomez around on Tuesday?

A. I didn't see him at that time.

Q. What time did you go to work on Wednesday?

A. I didn't go to work on Wednesday.

Q. You didn't go to work on Wednesday?

A. No.

Q. How did that happen? [194]

(Testimony of Ernie Reich.)

A. I started at 7 o'clock on Tuesday morning and worked until about 3 o'clock, coming home and I got a couple of hours of sleep and then went back to work at 6 o'clock and worked all night until 7 o'clock in the morning.

Q. Did you know there was to be an initiation meeting of the union Wednesday night?

A. I did.

Q. How did you learn that?

A. From one of our warehousemen.

Q. Do you remember who it was?

A. Mr. Reckling.

Q. Where were you when he told you about it?

A. I was at home.

Q. What did he tell you?

A. He told me we were going to have a meeting on Wednesday night, that night.

Q. What else?

A. That is all.

Q. Well, did he say what time the meeting was to be held?

A. He said 8 o'clock.

Q. Weren't you aware that the men customarily worked until at least that late, and usually later?

A. I was. I asked him how come he came home at 4:30. He said that they got permission to leave at 4:30.

Q. Did he say who got permission? [195]

A. He said Anger had got permission; that he inquired about it and that Mr. Anger told Reckling that.

(Testimony of Ernie Reich.)

Q. Did you go to the meeting?

A. I did.

Q. Did you speak to Mr. Anger at the meeting?

A. Yes.

Q. Did Mr. Anger tell you anything about how leave was gotten to attend this meeting?

A. No, he didn't.

Q. He didn't speak about it at the time?

A. No.

Q. Did you show up for work the next morning?

A. I did.

Q. What did you find?

A. I found the doors all locked.

Q. Did you try to get in?

A. No.

Q. Why not?

A. The doors were all locked and had watchmen around there, and I asked the watchman why we couldn't go in, and he said the old man said to keep us all out, to keep the doors locked.

Q. Do you know who he was referring to when he spoke of the "old man"?

A. He meant Mr. Huddleson, because he is the fellow he [196] takes orders from.

Q. What did you do then?

A. Just stood around.

Q. When was the picket line formed?

A. About 10 o'clock that day, Thursday.

Q. Did you serve on the picket line?

A. I did.

(Testimony of Ernie Reich.)

Q. Did you have any conversations with any official of the company shortly after the lockout?

A. I had one with Mr. Huddleson about three or four days after the lockout.

Q. What time of day was that?

A. It was about 9 o'clock in the morning, around that time.

Q. And where did this conversation take place?

A. Out on 14th Street and 57th Avenue.

Q. Anybody else present?

A. Quite a few fellows were around there; Mr. Phillips, for one.

Q. Is he one of the complainants in this case?

A. Yes.

Q. Anybody else that you can think of?

A. No, not that I know of right now.

Q. What was the subject of his conversation?

[197]

A. Why I heard from some one, I don't remember who it was, that Mr. Huddleson told him that we could go back to work if we wanted to, he came up close to me and I jumped him about the question.

Q. What do you mean? Did you jump on him physically?

A. No; he was too big for me. So I asked him why he wanted us to go back to work when he locked us out. I said, "It was a dirty trick to play on us."

(Testimony of Ernie Reich.)

He said, "Who the hell told you we locked you out?"

The watchman was there close and I said, "There is the man that told us," and I called him over and he verified my statement.

Q. What do you mean, he verified the statement?

A. He said that was what he told us, we were locked out on that Thursday morning. So that is all that was said there. He walked off and didn't answer.

Q. Did Mr. Huddleson either affirm or deny having given these instructions to the watchman?

A. No, only that he said, "Who the hell told you you were locked out?"

Q. That was to you?

A. That was to me.

Q. Do you remember who that watchman was?

A. Gene Richie.

Q. Did you have any further conversations with any company [198] official?

A. No.

Q. When did you first see Mr. Gomez around the Santa Cruz plant?

A. Wednesday, about a quarter of five.

Q. What were you doing there at the time?

A. I was supposed to go back to work at 6 o'clock that night.

Q. And where did you see Mr. Gomez?

A. In the warehouse.

Q. What was he doing?

(Testimony of Ernie Reich.)

A. He was in the office at the time that I saw him, and about five minutes later I saw him go out and get about six or seven Chinamen and negroes and put them to work.

Q. Where did het get them from? I mean where did he go out and get them?

A. At the door we usually entered.

Q. And this was about 5:20, you say?

A. Around that time, yes.

Q. Did you see him do anything else?

A. No.

Q. You didn't have any conversation with him, did you?

A. No.

Q. You say that you showed up around 6 o'clock to go to work? [199]

A. I showed up about a quarter of five to go to work.

Q. Intending to go to work at six?

A. Yes.

Q. Did you go to work?

A. No.

Q. Why didn't you?

A. Mr. Torenson asked me if I was going to the meeting and I said, "Yes." He said, "The old man gave us orders not to let anybody go to work that is going to the meeting."

Q. What time was that?

A. 5:15.

Q. Did you say anything to Mr. Torenson? Did you ask him anything about what you had heard—

(Testimony of Ernie Reich.)

who was the man that told you about the meeting, Reckling? Did you say anything to Mr. Torenson about that?

A. No.

Q. Did you see any Santa Cruz cars held up on any of the wharves after the picket line was established?

A. I did.

Q. Where did you see it?

A. Encinal Terminal, Howard Terminal.

Q. About what quantity?

A. At Encinal Terminal I saw about 6,000 cases held up.

Q. Do you know how long it was detained?

A. Until Judge Sloss made his decision, and then it was [200] released.

Q. About how long a period of time was that?

A. Two or three weeks.

Q. Do you know where any of that cargo was headed for?

A. Most of it was headed for Boston.

Q. Do you remember the name of the firm?

A. First National Stores, for one.

Q. Do you know whether it was the practice at the plant to interchange the Stokely and Santa Cruz warehousemen?

A. Yes.

Q. Did you ever see it done?

A. I have.

Q. How often did it happen?

(Testimony of Ernie Reich.)

A. Almost every day.

Q. Well, how was it arranged?

A. If Stokely happened to be busy for one day, why we would give him some of our men, and if we got busy, why we borrowed some of their men—always changed that way.

Q. Was that a part of your function as assistant foreman, to arrange for those transfers?

A. Yes, I did.

Q. Do you know whether the Santa Cruz and Stokely warehousemen received the same pay check, the same type of pay check?

A. They did. [201]

Q. Both Santa Cruz checks?

A. They received Haslett Warehouse checks.

Q. By whom were they signed?

A. That I don't know.

Q. You state that both the Santa Cruz and the Stokely men received Haslett Warehouse checks?

A. Yes.

Q. I thought they were working for Santa Cruz. How do you explain that?

A. They are bonded agents for the Santa Cruz Fruit Packing Company.

Q. You say that the men received those Haslett checks?

A. The foremen did; the two foremen.

Q. Do you know whether the men did?

A. No.

Q. What checks did the men receive?

(Testimony of Ernie Reich.)

A. Both Santa Cruz Fruit Packing Company checks.

Q. Who did you take your orders from?

A. Mr. Torenson.

Q. Did you ever take orders from Mr. Huddleson?

A. Once in a while.

Q. He was your superior, was he not?

A. Yes.

Q. Did you ever offer any violence of any kind to any truck driver, or any employe of the Santa Cruz of Stokely [202] after the lockout?

A. I did not.

Q. Did you ever receive any instructions from the union in regard to any violence of any kind, or direct action against any Santa Cruz or Stokely employe, or truck driver, or any one slse?

A. No, other than peaceful picketing.

Q. And did you ever hear any one threatened with any violent consequences if they refused to do anything you told them?

A. I didn't.

Q. Will you take your job back if it is offered to you?

A. I would.

Q. Do you know whether the Santa Cruz or Stokely cargo is still hot?

A. No, not as far as the handling is concerned.

Q. Did you know what demands were contained in the agreement that the union was to submit to Mr. Huddleson?

(Testimony of Ernie Reich.)

A. I did some of them, yes.

Q. And as far as you were aware what were those demands?

A. Eight hour days, 62½ cents an hour.

Q. Were those the matters that the men were chiefly concerned with?

A. Yes.

Q. Do you know whether Mr. Woods, as business representative, [203] had authority to present this proposed agreement?

A. He did.

Q. And to carry on negotiations with the company?

A. Yes.

Q. And to arrive at an agreement?

A. Yes.

Q. Would that agreement be subject to the men voting on it as to whether it was satisfactory?

A. Yes.

Q. How many men were employed in the Santa Cruz warehouse?

A. 25 or 30 men.

Q. How many in the Stokely warehouse?

A. About eight or ten men.

Q. Who was their foreman?

A. Mr. Morris.

Mr. Edises: No further questions. [204]

Cross Examination

Q. (By Mr. St. Sure) In your work there, did you ever see any bills of lading covering the shipments of any of the Santa Cruz merchandise?

(Testimony of Ernie Reich.)

A. I did.

Q. You know, as a matter of fact, don't you, that all shipments to points in other states—in states other than California—were shipped FOB Oakland, or FOB the plant due the purchaser?

A. Yes.

Q. Pardon me?

A. Yes.

Q. And in regard to the foreign shipments—Did you ever see the bill of lading on any of the foreign shipments?

A. No.

Q. Your estimate of the amount of the shipments to foreign ports was seven to eight per cent?

A. Yes.

Q. I wasn't quite clear on that. You said that six per cent you thought was shipped by water, and seven or eight per cent to foreign ports—by that did you mean seven or eight per cent of the six, or of the total?

A. Six or seven per cent of the domestic shipments, seven per cent on top of that, as all going by water to foreign ports. [205]

Q. Your estimate is seven per cent of the total pack went to foreign ports?

A. Yes.

Q. You say you saw the bills of lading on some of these shipments. In what connection was that in? In connection with what part of your work?

(Testimony of Ernie Reich.)

You didn't have the handling of those bills of lading?

A. Why, no.

Q. You don't know whether or not the purchaser of those products designated how they were to be shipped?

A. The only way I knew that, I handled part of the orders that came out of our main office.

Q. You did know the purchaser did designate how they were to go by?

A. The purchaser didn't designate that—the shipper.

Q. By that—What do you mean, the shipper?

A. The Santa Cruz Fruit Packing Company.

Q. Where did you get that information?

A. I know.

Q. How do you know?

A. I know the traffic manager.

Q. Who is the traffic manager?

A. Mr. Gaddis.

Q. He designates what ship merchandise shall go on—to—say, to Boston? [206]

A. He does as far as I know.

Q. Is that your understanding of it?

A. Yes.

Q. When did you first meet Mr. Woods?

A. On the evening of August 7—on Wednesday.

Q. That was the night of the meeting?

A. Yes, sir.

Q. And that was the night you were initiated into the union?

(Testimony of Ernie Reich.)

A. Yes, sir.

Q. And all the other men were initiated on that same evening?

A. Almost all of them, yes.

Q. Now, there had been an agreement mailed to Mr. Huddleson, had there?

A. There had been, but I don't know when it was mailed.

Q. Do you know whether it was mailed before or after this meeting on Wednesday evening?

A. I believe it was mailed before Wednesday evening.

Q. Up to that time you hadn't met Mr. Woods?

A. No.

Q. How did Mr. Woods obtain the authority from you, or so far as you were concerned, to represent you before Wednesday evening?

A. That, I don't know. Unless we paid our initiation fees and were considered a member of the local [207]

Q. Had you up to the time—Wednesday evening—ever seen any form of proposed agreement, or discussed it with Mr. Woods?

A. No, sir.

Q. Did you see it after or at that meeting?

A. I just heard about it, that is all.

Q. What did you hear about the proposed agreements?

A. Our wage scale—warehousemen's wage scale—eight hours a day, and our overtime——

(Testimony of Ernie Reich.)

Q. (Interrupting) Was that the first time you knew what this proposed agreement contained, the evening that this meeting was held—on Wednesday evening?

A. No, the boys talked it over before—two or three weeks before.

Q. Did you know anything concerning any provision in the proposed agreement as to the closed shop?

A. No, I don't remember.

Q. Did you know that any request or demand was to be made requiring that all persons working in the warehouse belong to this particular union?

A. I don't know.

Q. Pardon me?

A. I don't know.

Q. You don't know about that?

A. No. [208]

Q. Now, on Monday you say Mr. Huddleson—that is, the Monday before this Wednesday meeting was held—Mr. Huddleson came out into the warehouse and asked the men to be brought in there; and he talked with them. Was Mr. Torenson there at the time?

A. He was.

Q. Anybody else there that was a foreman or assistant foreman, except yourself and Mr. Torenson?

A. Mr. Morrison, he was the man from the Stokley Warehouse.

Q. Anyone else?

A. Our shipping clerk, Mr. Wagner.

(Testimony of Ernie Reich.)

Q. He was there?

A. Yes.

Q. Any others that you recall?

A. No, that was all the foremen; I believe the rest were all warehouse members.

Q. Well now you say that Mr. Huddleson opened the meeting by saying he had heard that you had joined the union, and wanted to know what was meant by it, is that correct?

A. Yes.

Q. Who answered him, if anyone did?

A. No one answered him.

Q. Anybody speak up at all?

A. Later on in the conversation, yes.

Q. But, I mean when he asked the question, "What do you [209] mean by it?" nobody spoke up at that time?

A. No.

Q. As you related the conversation he said "Why didn't you come to me? If it is a matter of more money, why don't you come and talk it over yourselves?" Anybody answer that question?

A. No.

Q. Then, he said something about "he hadn't been sleeping." He had a contractor who could do it for less. He didn't see why he couldn't give it to the contractor. He said something about that, is that correct?

A. No.

Q. Anynody say anything at that time?

A. No.

(Testimony of Ernie Reich.)

Q. Mr. Huddleson also said—you say Mr. Huddleson didn't want to be in the position of taking orders from outsiders. He was going to run his own business?

A. Yes.

Q. He was opposed to paying 62½ cents per hour, because he didn't want to be made the goat. If you wanted to go out and organize the canners he would be glad to pay $1.00 an hour?

A. Yes.

Q. Anybody have anything to say then?

A. Mr. Resburg spoke up. He said, "Why don't you start [210] off and pay 62½ cents an hour, and the rest of them would all follow suit?"

Q. Mr. Huddleson said then, he didn't want to be picked. If they all did it he would, but he didn't want to be made the goat, was that his reply to that?

A. Yes, that is right.

Q. Then, you say, he said "to think it over a couple of days," and that was about the end of the meeting?

A. Yes.

Q. Did anybody ask any questions or make any statements at all, except this one man who said, "Why don't you start it; the others would follow suit"; was anything else said by the employees there?

A. Not that I know of.

Q. Not that you recall?

A. No.

(Testimony of Ernie Reich.)

Trial Examiner Traynor: We may have a recess for five minutes.

Mr. St. Sure: Thank you.

(At this point a recess was taken after which proceedings were resumed as follows.)

Q. (By Mr. St. Sure) Mr. Reich, on this Wednesday, you say you left the plant about 3 o'clock, and then came back about a quarter past five?

A. No, I didn't say that. [211]

Q. Pardon me, I wasn't quite clear on that. What was the situation?

A. No, I left the plant about 7 o'clock Wednesday morning, and got through work at seven, coming back about a quarter after five—back to work at six o'clock.

Q. I see. In the meantime, between the time that you had this meeting with Mr. Huddleson on Monday evening, and the time that this union meeting was held on Wednesday evening, did the men have any discussion as to what they would do in view of Mr. Huddleson's declaration that they get together and discuss what you were going to do, and take it up with him, notify him that you were going to go ahead upon this proposed contract, whether you would or would not take it up with him any further?

A. We did not.

Q. Following the meeting of Monday night with Mr. Huddleson, the next move was simply the

(Testimony of Ernie Reich.)

meeting, the union meeting, so far as the men were concerned?

A. Yes.

Q. There was no attempt in the meantime to talk with Mr. Huddleson, or tell him what you had decided to do, except you notified him—Mr. Torenson—that you were going to the union meeting that night?

A. Yes.

Q. Anyone suggest at all that you should take up with [212] Mr. Huddleson your determination to go ahead with the agreement or proposed agreements?

A. I believe that was taken up with our business agent, Mr. Woods.

Q. Do you know that it was?

A. I don't know for a fact.

Q. Do you know whether Mr. Woods saw Mr. Huddleson in the meantime?

A. I don't know.

Q. Now, when you came back Wednesday afternoon to the plant about 5:15, you say you had anticipated going back to work at six?

A. Yes, sir.

Q. And normally, you would have worked on that shift from six until what time?

A. Some time the next morning.

Q. And on this particular evening, did you intend to work your full shift, or did you intend to leave some time in the evening to go to this union meeting?

(Testimony of Ernie Reich.)

A. I was figuring on going to the union meeting.

Q. And you say when you got there that Mr. Torenson said to you—well, I don't seem to have a memorandum of what that statement was, but something was said that the men would—that the men who were going to the meeting shouldn't go to work, or something of that kind? [213]

A. Yes.

Q. Just what words were used by Mr. Torenson, such as you can recall them?

A. He said Mr. Huddleson told him "Anyone who attended that meeting needn't report to work after the meeting."

Q. Did Mr. Torenson say that if the men didn't want to work their full shift they needn't come back to work?

Mr. Edises: Will you specify what conversation?

Mr. St. Sure: The same conversation when he came there at 5:15, and expected to go to work.

The Witness: What was the question?

Q. (By Mr. St. Sure) Didn't Mr. Torenson say, in effect, to you that the instructions he had, were unless the men wanted to go to work and work their full shift that night, they just needn't go to work at all?

A. Well, he said that and he said the other too. He said that if the boys didn't want to work their whole shift, why they needn't report back to work after the meeting.

Q. In other words, unless they wanted to work their full shift through, they needn't bother coming

(Testimony of Ernie Reich.)

back after the meeting. That was the subject of the conversation you had with Mr. Torenson?

A. That's right.

Q. Knowing that, having been told that by Mr. Torenson, you went to the meeting? [214]

A. I did.

Q. Well, did you think Mr. Torenson was fooling when he said that his instructions were from his superior, Mr. Huddleson, or your superior, that if you didn't work the full shift, you needn't come back?

A. There wasn't much choice about going to work. Gomez was in there, and there wasn't much choice. What the hell choice would I have? Not a bit.

Q. Anyway, you didn't say, "Well, I won't go there to the meeting; I will go to work and work my shift?"

A. I was willing to go to work at six o'clock, and up until the time of the meeting. I usually got off when I wanted to.

Q. When Mr. Torenson said "If the men don't want to work their full shift," you didn't say "That's all right; I will not go to the meeting. I'll work full through"?

A. No, I didn't say that.

Q. Pardon me?

A. No, I didn't say that.

Q. Did you come back after the meeting?

A. I did not.

Q. Why not?

(Testimony of Ernie Reich.)

A. I didn't see any use in coming back.

Q. Why did you come back the next morning?

A. I did come back the next morning. [215]

Q. What had changed your mind over night? You thought there was no use coming back that night? Why did you come the next morning?

A. I didn't walk off no job.

Q. Pardon me?

A. I didn't walk off the job.

Q. You say you didn't think there was any use in coming back after the meeting. Is that correct?

A. Yes, sir.

Q. Didn't that same reasoning apply the next morning?

A. I don't know whether it did not not.

Q. When you arrived the next morning, you say the watchman told you, "The old man said to keep you all out," or something of that kind?

A. Yes, sir.

Q. And then, that morning, beginning about ten o'clock, that would be Thursday morning, the picket line was formed, is that correct?

A. Yes.

Q. By the way, on this evening before the meeting—Wednesday evening meeting—was there anybody else there when Mr. Torenson had the conversation with you about either working the full shift or not bothering to come back?

A. I don't remember.

Q. Any of the other men around there that you recall? [216]

(Testimony of Ernie Reich.)

A. Some of the boys were there, yes.

Q. Did any of them go to work and work through their shift?

A. I don't know.

Q. They all did show up at the meeting, as far as you know?

A. Some of them didn't.

Q. Some of them did?

A. Some of them didn't.

Q. Some of them did not?

A. Yes.

Q. Who didn't come to the meeting?

A. I don't know that.

Q. While you were on the picket duty, what were your particular duties as a picket?

A. Stop trucks, that was about all.

Q. Yes. What did you stop trucks for? What was your purpose in that?

A. Well, the union men usually stick together that way. If they know there is a picket line there, they won't go through. If you inform them, they won't go into the place.

Q. Did you stop any men who were not union men?

A. Not that I know of; usually all union drivers in the bay district.

Q. Did you see any farmers coming in with loads of fruit or vegetables that were stopped? [217]

A. I did not.

Q. Did you at any time after Thursday ask Mr. Huddleson or anyone else, whether or not you could return to work?

(Testimony of Ernie Reich.)

A. I didn't ask them—no.

Q. Now, you say that you saw some Chinamen that Mr. Gomez was taking into the warehouse.

A. I did.

Q. How many Chinamen did you see?

A. There was about seven men went in there, and I don't know what they were—Chinamen, one negro—I don't know what the rest of them were.

Q. How many Chinamen did you see?

A. I don't remember how many Chinamen.

Q. Pardon me?

A. I don't remember how many Chinamen were there—I don't remember how many Chinamen were in the bunch.

Q. You remember seeing one negro?

A. I do.

Q. Did you see more than one Chinaman?

A. Yes.

Q. How many would you say?

A. I would say there was more than one.

Q. You were on picket duty there, for how long a time after that, how long a period of time did you remain there as a picket? [218]

A. About two months.

Q. Did you see the warehouse crew coming and going during that time at all?

A. I did, once in a while.

Q. Did you see any Chinamen in the crew after that?

A. I did.

Q. How many?

(Testimony of Ernie Reich.)

A. Two or three of them.

Q. Two or three?

A. Yes.

Q. When the warehouse crew, following this Thursday, left the plant or went into it, was anything said or done to them by any of the men in the picket line, that you noticed?

A. No.

Q. Pardon?

A. No.

Q. Not a word spoken that you knew?

A. I heard a lot of words spoken, but I didn't remember what they were about.

Q. On this Wednesday evening before the meeting, you say you arrived there about 5:15. How long did you remain there that evening?

A. I wouldn't say over 25 minutes all together—20 or 25 minutes.

Q. When you left, were any of the other men there of the [219] night crew that were going on, or to go on, around six o'clock?

A. There were several of them, yes.

Q. Did they leave also when you left?

A. They didn't leave with me. I left alone.

Q. Who were the men who were there, can you remember?

A. Dick Ferriera, for one.

Q. Do you remember the names of any of the others who were there?

A. Henry Cincione.

Q. Do you remember any of the others who were there?

(Testimony of Ernie Reich.)

A. That is all I remember.

Q. Did you discuss with them the things that Mr. Torenson said to you?

A. I did not.

Q. Did you talk with them?

A. I don't know.

Q. Did you see them at the meeting afterwards?

A. I don't remember that.

Q. When Mr. Torenson said to you that his instructions were either that the men would work their full shift, or they needn't bother coming back after the meeting, did you say anything to him at that ime?

A. I didn't say anything.

Q. Pardon me? [220]

A. I didn't say anything.

Q. Didn't you say anything more at all?

A. He said "How do things look?" I said "O.K." and I walked off.

Mr. St. Sure: That is all.

Redirect Examination

Q. (By Mr. Edises) When you showed up at the warehouse on Wednesday around 5:15, were the day men present?

A. No.

Q. And ordinarily they would have been present, would they not?

A. Sometimes, yes.

Q. What did you understand that to mean?

A. Well, I had Mr. Reckling tell me when I left home that they had instructions they could

(Testimony of Ernie Reich.)

knock off at 4:30, and that they were going to the meeting that night.

Q. You say had instructions they could knock off, referring to Mr. Torenson's permission?

A. Yes.

Q. You are referring to Mr. Torenson's permission?

A. Yes.

Q. You knew that the men were going to the meeting, did you not?

A. I did, yes.

Q. And you saw Mr. Gomez present with about how many men? [221]

A. Seven or eight men.

Q. Did you know what Gomez was doing there?

A. It looked to me like he was hiring boys to go to work.

Q. What was that last?

A. He looked to me as if he was hiring boys to go to work. He did take them and put them to work on the labeling machines.

Q. What boys are you referring to?

A. Chinamen and negroes.

Q. Did it occur to you to go up to Mr. Gomez and ask him for a job——

A. I did not.

Q. Why not?

A. I didn't like his looks.

Q. Well, you had a pretty good idea, didn't you, about what Mr. Gomez was doing there?

A. I did, yes.

(Testimony of Ernie Reich.)

Q. What was your idea of what he was doing?

A. I figured he just come in there and took our jobs.

Q. Were these Chinamen and negroes union men?

A. No.

Q. What were they?

A. Scabs, I guess.

Q. As a union man, do you think that in the absence of specific instructions from your union, it is customary to [222] work with scabs?

A. It is not.

Q. Did that have anything to do with your failure to ask for a job with Gomez?

A. You wouldn't catch me working with a bunch of Chinamen, whether I belonged to any union or not.

Q. About how long did Mr. Huddleson talk when he spoke to the men on Monday?

A. I should say about 20 or 25 minutes.

Q. Have you related every word that he said at that meeting?

A. I wouldn't say that I did.

Q. You have given merely the substance of what he said, is that right?

A. Right.

Q. Did he say a great deal more along the same lines you have indicated?

A. Yes.

Q. Do you recall anything further that was said by Mr. Huddleson? Is your recollection stimulated

(Testimony of Ernie Reich.)

as to what took place at that meeting? I would like to get the specific language, if you know it.

A. The one thing he did say was, before he would have a union in his place, he would be carried out in a wooden kimono, or words to that effect. [223]

Q. Did he say anything else?

A. That is all I can remember.

Q. Did you know at that time—at the time you joined the Warehousemen's Union, the union had contracts—working agreements—with other warehouses?

A. No, I didn't at that time—no.

Q. When did you first learn that?

A. After I had been in the union for several days.

Q. You knew it prior to the lockout however, didn't you, or did you?

A. Prior to the lockout?

Q. Yes.

A. That they had agreements with Santa Cruz, or others?

Q. No, with other warehouses.

A. I didn't know it.

Q. How about the Terminal operators?

A. I didn't know about that either.

Q. Had you ever belonged to a union before?

A. No.

Q. Were you—Did you have any knowledge of union procedure and activities?

A. No.

(Testimony of Ernie Reich.)

Q. I believe you were asked the question by Mr. St. Sure as to whether or not you had any conversation with Mr. Huddleson after the lockout on Thursday, and your reply, I [224] believe was "No." You meant other than the conversation you testified to on direct, did you not?

A. Yes.

Q. You testified that you didn't meet Mr. Woods until the union meeting, the initiation meeting, on Wednesday night. Did you know that Mr. Woods was the business agent of the union?

A. I did.

Q. Who told you?

A. Mr. Anger.

Q. Did you know what his duties were as business agent?

A. I did.

Mr. Edises: That is all.

Mr. St. Sure: No questions.

Trial Examiner Traynor: That is all. You had no further questions, Mr. St. Sure?

Mr. St. Sure: No.

(Witness excused.)

Mr. Edises: Mr. Pepitone.

JOE PEPITONE,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Edises) What is your name?

A. Pepitone—Joe Pepitone.

Q. Where do you live? [225]

A. What is that?

Q. Where do you live?

A. Twenty-seventh Avenue.

Q. What number?

A. 1121.

Q. Are you married?

A. Yes.

Q. Any children?

A. Six—some of them married.

Q. Did you join the union, Mr. Pepitone?

A. No, I never did join it before.

Q. You joined since the lock-out?

A. Yes.

Q. What was your job at the Santa Cruz?

A. Janitor—going around and cleaning the warehouse.

Q. Do you remember working on Wednesday, October 7th—August 7th?

A. Yes.

Q. Do you remember hearing a conversation on Wednesday morning, August 7th, between Mr. Anger and Mr. Torenson?

A. Yes.

(Testimony of Joe Pepitone.)

Q. Was anybody else there? Was Mr. Huddleson there?

A. Mr. Hughes.

Q. Did he work on the printing machines?

A. Yes, printing machines. [226]

Q. What did you hear them say?

A. I heard Bob ask him——

Q. (Interrupting) Bob is Mr. Anger?

A. Yes. They wanted to go home at 4:30. He said "All right."

Q. Who said "All right?"

A. Mr. Torenson.

Q. That was about all that was said?

A. Yes.

Q. Do you remember hearing anything else?

A. No.

Q. Did you hear Mr. Anger speak to Mr. Torenson again during that day?

A. No, in the afternoon I never seen him talk to him no more.

Cross Examination

Q. (By Mr. St. Sure) Are you one of the complainants in this proceeding?

(No answer.)

Q. When did you join the union?

A. Seventh of August.

Mr. St. Sure: I withdraw the first question. I see that he is one of the complainants.

To straighten out the record, apparently this gentleman applied when the others did, and was init-

(Testimony of Joe Pepitone.)

iated at the same [227] time as the others. I thought he joined subsequently.

No questions.

Mr. Edises: That is all, Mr. Pepitone.

(Witness excused.)

Mr. Edises: Mr. Doyle.

LARRY DOYLE,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Edises) What is your name?

A. Larry Doyle.

Q. Where do you live?

A. 1406 Filbert street.

Q. Oakland?

A. Yes.

Q. Are you married?

A. Yes, sir.

Q. Any children?

A. No, sir.

Q. Stokley or Santa Cruz?

A. Santa Cruz.

Q. What was your job at Santa Cruz?

A. Everything in general — general warehouse work.

Q. Did you do loading of the cases into the box cars and trucks?

(Testimony of Larry Doyle.)

A. No. [228]

Q. What was that?

A. No.

Q. Did you do everything except that?

A. Yes, sir.

Q. Who is your boss?

A. Ernie Reich and Bob Anger.

Q. Are you on the day shift or night shift?

A. Night shift.

Q. During the first part of August?

A. Night shift.

Q. What time did you go to work on the evening of Tuesday, October 6th—August 6th?

A. I went to work at 6 o'clock.

Q. What was that?

A. Six o'clock.

Q. What time did you knock off?

A. I knocked off about 9:30 Wednesday—9:30 or 10:00.

Q. Did you speak to Bob Anger about the time you knocked off?

A. Yes, a little bit before. We were cleaning up.

Q. What was the subject of that conversation?

A. He come around; he told me they were going to go to a meeting that night. He asked Stan Torenson. He said it was all right for us to go.

Q. Did he tell you where the meeting was to be held?

A. Yes. [229]

Q. Was anything further said at that time?

(Testimony of Larry Doyle.)

A. No.

Q. Did you speak to Mr. Torensen that morning before you left the plant?

A. Yes.

Q. About what time was that?

A. About 9:30, when I was going out.

Q. Anybody else present at that time?

A. Yes, Al Pio, and—I don't recall all their names.

Q. Were these persons present when Mr. Anger spoke to you?

A. Yes, they work on the machines.

Q. Were they also night shift men?

A. Yes.

Q. What was said?

A. "Which one of you boys are going to the meeting?"

We said "We were."

He said "I will have men to take your places while you are gone." He said to come back after the meeting was over—"You can go to work."

Q. Did he say who he would have to take your places?

A. Yes, he said he would get extra helpers on the can stack.

Q. He told you to "come back and go to work after the meeting"?

A. Yes, sir.

Q. Then he said about what time you would be back after the [230] meeting? How long the meeting was expected to last?

(Testimony of Larry Doyle.)

A. He asked us how long we thought we would be gone. We said back at ten o'clock.

Q. Anything further said at that time?

A. That is all.

Q. Did you go to the meeting that night?

A. Yes.

Q. What time was the meeting over?

A. A quarter to ten.

Q. What did you do then?

A. We got on the car and went back to the cannery.

Q. Who do you mean by "we"?

A. Anger, Sannebeck and myself.

Q. What did you do then?

A. We went back to the cannery. It was about ten o'clock when we got there. We went down to the cannery; just before we got there two men were standing back in a machine. They ran out in a machine to stop us. We didn't pay any attention to them; we drove up to the warehouse door.

It was closed but the shipping light was on overhead. We knocked on the door; nobody answered. We knocked again. Pretty soon the doors opened by this—that contractor, Gomez.

He asked us what we wanted.

Q. How did you know it was Gomez? [231]

A. I didn't know; I just knew, as soon as I seen him.

Q. Did anyone afterwards point him out to you?

(Testimony of Larry Doyle.)

A. Yes.

Q. He was the man who was pointed out to you?

A. Yes.

Q. All right. Go ahead.

A. He said "What do you want?"

We said "We want to see Stan."

He said "Stan isn't here."

Just then Stan Torenson stuck his head out of the door. "I told some of the boys if you went to that meeting you needn't come back."

We said "You told us this morning to come back."

He said "I can't help it; that is orders."

We turned around and I said "Is that all?"

He said "That is all."

We got in the car and went.

Q. Were there any men around at the time of this conversation?

A. These two fellows were waiting. They walked down to us as soon as we stopped the car. They came up—Ernest Arano, the extra watchman, and Jack—I don't know what his last name is. He is a kind of a watchman too.

They came up there; they stood right behind us. Jack had his hand in his pocket; the other guy had a gun—I [232] don't know, a sawed-off shotgun, tear gas gun. He was standing there, had a rifle stock on it—a barrel like that.

When we finished they walked back to the car. We wanted to get out there before they got funny.

(Testimony of Larry Doyle.)

Q. Did you understand that you weren't wanted? More than that?

A. They walked right back with us, so we beat it.

Q. What did you do then?

A. We went home to bed.

Q. Did you come down to the plant the following morning?

A. No, sir.

Q. When was the next time that you came to the plant?

A. That afternoon.

Q. What did you do then?

A. I came down there. I saw all the boys out in front. I started talking to them.

I asked them if they got the same thing I got.

They said "Yes."

Q. What did you mean by "got the same thing I got"?

A. They wouldn't let them go in. They said they couldn't get in; all the doors were locked.

Q. What else? Anything particularly done there then this afternoon?

A. No, I went back to the car. I went back home again.

Q. Did you do any picket duty? [233]

A. Yes, sir.

Q. When?

A. I came down the next morning. Mr. Anger told me to stay around with the rest of the boys.

Q. Did you have any conversation after the lock-

(Testimony of Larry Doyle.)

out with any of the bosses or officials of the company, other than the one that you had Wednesday night with Torenson?

A. No, sir.

Q. Did you have any experience in connection with direct action or violence on the picket line?

A. No, sir.

Q. Weren't you beat up?

A. Oh yes, I was, one night.

Q. Tell us about that.

A. Well, I was coming home from town——

Q. (Interrupting) What night was this?

A. I don't remember just exactly what night.

Q. How long after the lockout, two weeks to——

A. Two and a half weeks.

Q. All right.

A. I came by our emergency kitchen there.

Q. What time was that?

A. Ten-thirty.

Q. At night?

A. Yes, sir. [234]

Q. Go ahead.

A. I came by the kitchen and I noticed a truck——

Q. (Interrupting) What kitchen is this you are speaking of?

A. The emergency kitchen.

Q. For the pickets to eat?

A. Yes.

(Testimony of Larry Doyle.)

Q. Where was it located?

A. Three blocks from the cannery.

I saw one of the fellows standing on the running board, talking to somebody in the cab, anl I thought it was one of our boys talking to a truck driver.

Q. Whose truck was this?

A. I don't know—it belonged to Johnny Hartman, the contractor. So I looked in there; I saw this fellow. I recognized him as one of the men working in this plant. I thought it funny they would be parked down there.

Q. You mean the fellows who were working after the lockout?

A. Yes, right next to our kitchen.

I turned around, went up to the corner. Just as I came back, all these boxes started flying off the truck, and a bunch of guys running out.

Q. Did you recognize any of them?

A. I did, yes. [235]

Q. Who were they?

A. I don't know the last names. I know them by first names. I recognized Joe, I don't know his last name.

Q. Who was he? What was his job?

A. He worked in the front end. He was a checker.

Q. He belonged to the union?

A. No. And Mrs. Remington, the floor lady's son—her son, I don't know his name: Stoney Gardner——

Q. (Interrupting) Who is he?

(Testimony of Larry Doyle.)

A. He is another fellow who worked in the front end. He acted as kind of watchman, packed a gun while they were loading in the back end during the lockout. That is about all I can think of right then that I recognized.

Q. What happened?

A. So, when I seen the fellows jump out of the car, out of the truck like that—I thought—well, the fellow in there was a crippled kid in there. I thought they were going to murder him. I jumped into the car, the first one I saw in there. I yelled to him that they were wrecking the kitchen. I got out of the car. There was fighting out in the street. I started to go out in the street.

This "Joe," he came back. He said "Here is one of the——

Q. (Interrupting) You needn't be afraid to give the exact words.

A. (Continuing) "Here is one of the sons of bitches! Get [236] him!" I turned around; just as I turned around he grabbed me by the neck. There was another fellow I recognized as one of the mechanics. He had a sheet metal hammer with a square head on it. He started to hit me on the head. He couldn't hit me because this "Joe" was too fat to get under his arm. He was hitting me on the shoulder with it. The police arrived. They rounded them all up. They got them all rounded up in one place.

I heard some shooting around the corner. I

(Testimony of Larry Doyle.)

went over there to see what it was. I saw one of our fellows lying on the ground.

Q. Who was it?

A. I don't remember who it was. I just knew it was one of our boys. Then the police arrived. They rounded everybody up; stood up against the wall, started talking to us. They let me go.

I saw my wife over there across the street. I went to see if she was all right.

Q. Did you receive any injuries in that scuffle?

A. Just a few bruises, that is all.

Q. When did you get your button?

A. I got my union button Tuesday morning, I believe.

Q. Were you present on Monday at 6:00 or 6:30, when Mr. Huddleson spoke to the men?

A. Yes, sir. [237]

Q. Can you relate what took place at that meeting? By the way, how did you learn about the meeting?

A. I was working on the machines. Ernie Reich came around. He said, "Huddleson wanted to talk to all of the boys in the front of the warehouse."

I went up there. All the boys were gathered up there. We just sat down wherever we could. He started in.

He said that he heard we had joined the union; and he said he didn't have anything against the union. He belonged to one himself. He packed an iron worker's card for 20 years—something like that.

(Testimony of Larry Doyle.)

He said he didn't have anything against them; but he said he wouldn't pay 62½ cents an hour in his warehouse—it was impossible. The cannery was run on a competitive basis. If all the other canners in the state would pay 62½ cents he would pay it.

He said he didn't want to be the goat. Some of the boys told him why didn't he start and the others would follow?

He said he didn't want to be the goat. He would probably go broke by the time they got around to it.

He kept talking worse all the time. He used a lot of bum language there. He said we would see him "in a wooden kimona" before he would pay 62½ cents an hour.

Q. You stated he started out by saying he "didn't have anything against the union," and that he was a union man [238] himself. Did he end up by using language in a similar vein?

A. Not in the end, he got hotter.

Q. What did he say about a union then?

A. He didn't say anything direct about the union in particular. He just said about us, the idea, and everything in general.

Q. By "the idea," you mean joining the union, do you?

A. Yes, sir.

Mr. St. Sure: I suggest you are putting words in the witness' mouth, and trying to read his mind.

(Testimony of Larry Doyle.)

I suggest that counsel can't ask anything so leading and suggestive as that.

Trial Examiner Traynor: Yes, you can't ask that.

Q. (By Mr. Edises) What did you have in mind when he referred to "the idea"?

A. Well, he said the cannery was costing him so much a case now to put it up, and he could have—if we decided we wanted to walk off, he could have another contractor walk in the other door and put the stuff out for a cent less a can; and he said he would give us two days to think it over.

What I thought he meant was, we could either throw our buttons away, and go back to work, or we could take a walk—whichever we wanted.

Q. Would you take your job back if it were offered to you?

A. Yes, sir.

Q. Did you say you worked on the printing machine? [239]

A. No, I worked on the labeling machine.

Q. Labeling cans?

A. Yes, sir.

Q. Not marking cartons?

A. No, sir.

Q. Do you know whether the Stokely and Santa Cruz men were changed around from one warehouse to the other?

A. Yes, sir.

Q. Did that ever happen to you?

(Testimony of Larry Doyle.)

A. Yes, sir.

Q. More than once?

A. No, just once.

Q. Just once?

A. Yes, sir.

Q. Whose name appeared on your pay checks?

A. Gaddis & Kenny.

Q. Did the name of the Santa Cruz Fruit Packing Company appear?

A. Yes, sir.

Q. Did the Stokely men receive the same checks?

A. I did when I worked at Stokeley's.

Q. You received the Santa Cruz check?

A. Yes, I received the two checks.

Q. Do you know who did the hiring and firing in Santa Cruz?

A. Well, no. I was taken from the front end in the ware- [240] house. Stan Torenson hired me for the warehouse.

Q. Do you know Mr. Gomez?

A. Only by sight.

Q. Did you ever see him around the plant on—did you see him around the plant on Monday, August 5?

A. No.

Q. Tuesday?

A. No, sir.

Q. The first time you saw him was when he stuck his head out?

A. Yes.

Q. Did you see any strangers around the plant

(Testimony of Larry Doyle.)

that Wednesday night other than the guards that you have spoken of?

Mr. Edises: I don't know if he said they were strangers or not.

Mr. St. Sure: Extra watchmen.

Q. (By Mr. Edises) Did you see any other persons?

A. I saw some through the door. I saw some strangers in the warehouse. I saw two Chinamen and a trucker.

Q. Two what?

A. Two Chinamen.

Q. Anybody else?

A. No.

Mr. Edises: That is all [241]

Cross Examination

Q. (By Mr. St. Sure) The day that this fight occurred near the soup kitchen, or the kitchen that you had, did you know that earlier that day, or shortly after, before that time, some of the Santa Cruz employees had been beaten up, pulled off a truck?

A. No, sir.

Q. You hadn't heard about that?

A. No, sir.

Mr. St. Sure: That is all.

Trial Examiner Traynor: We will rest until 10 o'clock tomorrow morning.

(Thereupon at 4:00 o'clock p.m., the hearing in the above-entitled cause was adjourned until 10 o'clock a.m. Tuesday, December 24, 1935.) [242]

[Title of Court and Cause.]

Extra Sessions Courtroom
Alameda County Court House
Oakland, California

Tuesday, December 24, 1935.

Met, pursuant to adjournment, at 10:05 o'clock a. m.

PROCEEDINGS

Trial Examiner Traynor: You may proceed.

Mr. Edises: Call Mr. Costa.

GEORGE COSTA,

called as a witness by the National Labor Relations Board, being first duly sworn, testified as follows: [243]

Q. (By Mr. Edises) What is your name?

A. George Costa.

Q. And your address?

A. 1951 East 24th Street.

Q. Are you married?

A. No.

Q. Who did you work for just prior to the recent lockout?

A. Santa Cruz Cannery.

Q. Santa Cruz?

A. Yes.

Q. When did you go to work for them?

A. Let me see—it was about eleven months ago.

Q. When?

A. About eleven months ago.

Q. Were you receiving the same wages as other men in the warehouse?

A. 35 cents an hour.

(Testimony of George Costa.)

Q. 35 cents an hour?

A. Yes.

Q. What was your job, what did you do?

A. I did everything; general warehouse work.

Q. Did you do loading and trucking into box cars and trucks?

A. Yes.

Q. Were you present on Monday at around 6 o'clock when [244] Mr. Huddleson spoke to the men?

A. Yes.

Q. Were you wearing your union button at the time?

A. Yes.

Q. And what did Mr. Huddleson say at that time?

A. Well, he said about the boys joining the union; that nobody had told him about it; that he knew all along they were in the union; said that he didn't care if the boys joined the union. He talked nice at first and toward the end he said he wasn't going to pay the union scale; said before he would do that, he would be first wearing a wooden kimona.

Q. Did he say anything else?

A. He did a lot of swearing.

Q. Did he say anything else about the union?

A. No; said he wasn't going to be the goat.

Q. Do you remember any reference to a contractor?

A. Yes.

Q. What did he say?

(Testimony of George Costa.)

A. He said, "If you boys don't want to work here," he says, "all you have to do is to get out and you go out one door and we will have a contractor come in the other door."

Q. When did you first learn about the initiation meeting which was to be held on Wednesday night?

A. I think I knew about it either Monday or either——

Q. (Interrupting) Do you remember who told you about it? [245]

A. I don't know exactly who told me. Some of the boys told me about it.

Q. Were you working on the day or night shift at this time?

A. Well, Monday I was working day shift and Tuesday I went to the night shift, Tuesday night.

Q. And what time did you knock off Wednesday morning?

A. Wednesday morning? I would say about 6 o'clock, 6:30.

Q. In the morning?

A. Yes.

Q. What time did you show up for work again on Wednesday?

A. I was there about 6, I guess; ten minutes to 6.

Q. Ten minutes to 6?

A. About that time, ten minutes to 6.

Q. What did you find when you arrived at work?

A. Well, we walked over there and——

(Testimony of George Costa.)

Q. (Interrupting) Who do you mean by "we"?

A. Me and Clifford and Algrava. We walked in and we talked to Torenson, and Torenson said there was to be no night work that night.

Q. What else was said?

A. That is about all he said that I heard.

Q. Did Mr. Torenson explain his statement that there would be no night work that night?

A. I think he said something about a meeting.

Q. What? [246]

A. Something about going to a meeting.

Q. Do you remember his exact words in that connection?

A. No.

Q. Well, what did you do then?

A. I turned around and went out, and went home and dressed up and went to the meeting.

Q. Did you see any strangers present around the warehouse at that time?

A. Yes. To be exact, I walked around by the bean labeling machine and there was a man there with a gray suit on, a stranger.

Q. Do you know who he was?

A. Might have been Gomez. I couldn't say for sure. I still don't know who he is. I saw some Chinamen.

Q. What?

A. Some Chinamen working a truck.

Q. Now, did you show up the following morning?

A. Yes.

(Testimony of George Costa.)

Q. That is Thursday?

A. Thursday morning.

Q. What did you do then?

A. I went down by the warehouse and I was going to park by the warehouse and the watchman said, "Don't park there," and I went down and parked in front of the cannery.

Q. What time was this? [247]

A. Around six in the morning. We went inside the cannery, in the front door and back into the warehouse and talked to Torenson.

Q. You spoke to Torenson that morning?

A. Yes.

Q. And what was said?

A. I asked him, "Didn't Bob tell you about the boys going to the meeting?"

He said, "No, Bob didn't say a thing."

Q. What else was said?

A. I asked him, "Do we go to work?"

He said, "Well, if you want to work, you will have to see the contractor."

Q. Was that all?

A. Yes, he said, "See the contractor."

Q. What did you do then?

A. We had union buttons on.

Q. What?

A. We had union buttons on. I said, "The best thing for us to do is to wait outside."

He said, "Yes, it will be better for me, and then we will have no trouble." It would make it easier on him.

(Testimony of George Costa.)

Mr. Edises: Will you read the last answer, please.

(The answer referred to was read aloud by the reporter as above recorded.) [248]

Q. (By Mr. Edises) Did you see any guards around on Thursday morning?

A. Yes.

Q. About how many?

A. Two.

Q. Were they armed?

A. I don't know; I couldn't say.

Mr. Edises: No further questions.

Cross-Examination.

Q. (By Mr. St. Sure) On Wednesday evening when you went to the plant about ten minutes to six you say you saw Mr. Torenson there. Can you tell us just what he did say to you about working that night, or not working that night?

A. He said there wasn't going to be any work that night.

Q. Didn't he tell you if you went to work that you were going to work the full shift, and if you went to the meeting you didn't need to come back?

A. He didn't say that. All he told us was that there was no work that night for the night shift.

Q. Did you see Mr. Reich there that night?

A. I think he was in the office.

Q. Did you talk to him?

A. No.

Q. Did you talk to anybody else while you were there?

A. No. [249]

(Testimony of George Costa.)

Q. Did you ask Mr. Torenson why there wouldn't be any work?

A. No.

Q. Did he tell you the plant was going to shut down that night, or the warehouse was going to shut down?

A. He didn't say nothing of the kind.

Q. What?

A. He didn't say nothing of the kind.

Mr. St. Sure: No other questions.

Mr. Edises: That is all.

Trial Examiner Traynor: That is all.

(Witness excused.)

Mr. Edises: Call Mr. Rose.

GEORGE ROSE,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Edises) What is your name?

A. George Rose.

Q. And where do you live?

A. 1725 C Seminary.

Q. Are you married?

A. Yes sir.

Q. Any children?

A. No.

Q. Who did you work for, Santa Cruz or Stokely?

A. Santa Cruz.

(Testimony of George Rose.)

Q. When did you go to work for them? [250]

A. About September of 1933.

Q. And what was your job?

A. Electric truck driver.

Q. Electric truck driver?

A. Yes.

Q. What did you do?

A. Well, I hauled cans from the cooling floor into the warehouse, and I hauled cases to the shipping door, and I hauled cases from the Santa Cruz plant to the Stokely warehouse, and general trucking.

Q. Were you ever assigned to any other work besides running the electric truck?

A. The first year I was there I worked a year on the shipping gang.

Q. What?

A. The first year I put in on the shipping gang, loading trucks and cars.

Q. Were you ever later assigned to doing loading?

A. Later, yes; once in awhile.

Q. When did you apply for membership in the union?

A. I don't know; a couple of weeks before we were initiated I believe.

Q. Prior to the lockout?

A. Prior to the lockout.

Q. Were you present at the meeting on Monday in which Mr. [251] Huddleson spoke to the men?

A. I was.

(Testimony of George Rose.)

Q. Were you wearing a union button?

A. Yes.

Q. Now, as closely as you can recollect, what did Mr. Huddleson say at that meeting, and what did the men say? What was done?

A. Well, he said, "I understand you fellows joined the union. I see a lot of you have your buttons on." And he went on to say that due to the competitive basis of the canning industry, he didn't see how he could pay 62½ cents an hour while the other 57 canneries in the state weren't paying it, and that he wasn't going to be made the goat and start it in.

Q. What was the impression that you got from Mr. Huddleson's talk as to his attitude toward the union?

Mr. St. Sure: I object to that as calling for a conclusion.

Trial Examiner Traynor: Objection sustained.

A. He went on to say——

Trial Examiner Traynor: (Interrupting) Will you put the question again?

Q. (By Mr. Edises) Go on and tell what Mr. Huddleson said.

A. He said that he always treated us squarely, and if we [252] couldn't cooperate with him, there was the door; and he said, "I will have a contractor come in the other door." He said, "Before I recognize the union in this plant, I will go out in a wooden kimona."

(Testimony of George Rose.)

Trial Examiner Traynor: Mr. Reporter, will you read that answer?

(The answer referred to was read aloud by the reporter as above recorded.)

Q. (By Mr. Edises) Now, when did you learn about the meeting to be held Wednesday night?

A. I should say around 9 o'clock, or possibly a little bit before.

Q. Wednesday?

A. Wednesday morning.

Q. Who told you about it?

A. Bob Anger.

Q. And what did he say?

A. He said, "We are going to knock off at 4:30 to go to the meeting."

I saw him talking to Mr. Torenson and the next trip back I asked him about it, and he said he talked to Mr. Torenson and he said Mr. Torenson said, "O. K., Bob, I am glad you told me."

Q. How did you happen to see Mr. Anger talking to Mr. Torenson? [253]

A. I was trucking cases down the aisleway, which is directly opposite the printing press and also Torenson's office, and I had an idea he was telling him, because he said he was going to tell Mr. Torenson. So the next trip back I asked him.

Q. And he told you that?

A. He said it would be O. K.

Q. That Torenson said it would be O. K.?

A. Yes.

Q. Do you know Mr. Gomez?

(Testimony of George Rose.)

A. Just by sight.

Q. Did you ever see him around the plant prior to Wednesday afternoon?

A. Yes, I saw him Monday, Tuesday and Wednesday.

Q. When and where did you see him on Monday?

A. The first time I saw him was out in the street. Then I saw him in Stokely's warehouse; and then I saw him in the Santa Cruz plant warehouse.

Q. Was this on Monday?

A. On Monday.

Q. What was he doing at those times?

A. Well, he was going around the aisles looking at the stacks.

Q. And when and where did you see him on Tuesday?

A. About the same places.

Q. And what was he doing then? [254]

A. Doing the same thing; just looking around.

Q. Did you have any conversation with him on Tuesday?

A. No, I didn't.

Q. Did you have a contact at all with Gomez in one way or another prior to Wednesday?

A. Not prior to Wednesday.

Q. Did you have any on Wednesday?

A. I did.

Q. And what was the nature of that contact?

A. Well, just at 4:30, when we checked out, I had a tally sheet—I had been taking some cases to

(Testimony of George Rose.)

go to Stokely's warehouse—and Mr. Gomez was in the office at the time, and I turned——

Q. (Interrupting) Which office?

A. Mr. Torenson's office—and I turned my tally sheet over to him, and he took it and looked at it.

Q. What led you to turn your tally sheet over to Gomez?

A. Well, it seems about the day before, either Tuesday or Monday, I was talking to Mr. Morris, who is the foreman of Stokely's warehouse, and I happened to be talking to him and he pointed out Gomez, and he said, "There he is. You fellows just screwed yourselves. That is the guy that is going to take over the contract."

Q. What is your understanding of what he meant by his expression that you fellows had screwed yourselves? [255]

A. Well, that if we kept on, were going to continue our plans to belong to the union, he was going to take over the contract.

Q. Did you have any further discussion with Mr. Morris in regard to similar matters?

A. No, I didn't.

Q. Was any one else present at that conversation with Mr. Morris?

A. No, there wasn't.

Q. Where did it take place?

A. In Stokely's warehouse.

Q. Do you know whether any merchandise of the Santa Cruz or Stokely plants was shipped to places outside the State of California?

(Testimony of George Rose.)

A. Yes.

Q. What are some of those places?

A. Well, foreign, mostly ports in England; and France had a few orders there; also shipped to the Philippine Islands.

Q. How did you learn these places of destination?

A. In trucking cases to the shipping doors into cars I would have to get the orders by shipping marks which were on the cases.

Q. And as the goods were destined to different foreign places you hauled them to different cars, is that the idea, or trucks? [256]

A. Yes, either hauled them to cars, or put them in blocks to be picked up, 500 or 1,000, whatever it happened to be the amount of cases.

Q. Did you likewise notice merchandise destined for other states of the United States?

A. Yes.

Q. What were some of the places they were headed for?

A. New York, Boston, Philadelphia, Mobile, Iowa.

Q. Any other places?

A. There are a lot more.

Q. Do you know approximately how much of the pack went to places outside of California, including foreign and domestic points of shipment?

A. Well, I couldn't give figures, but the biggest part of the merchandise went out of the state.

(Testimony of George Rose.)

Q. Was that true during the entire shipping year?

A. Through the entire year.

Q. Was your job a year round job?

A. It was.

Q. How about the other warehousemen?

A. Well, part of the fellows, they were just on during the busy season. I would say there were about 15 or 20 men in the Santa Cruz the year round.

Q. And how about Stokely?

A. Stokely had about half a dozen there. [257]

Q. I take it, then, that the employment at the warehouses was much less seasonal than the employment in the main cannery, is that correct?

A. Right.

Q. Will you take your job back if it is offered to you?

A. Yes.

Mr. Edises: No further questions.

Cross Examination.

Q. (By Mr. St. Sure) Have you made any attempt to communicate with any one to ascertain whether your job is available, whether you could get it back?

A. No.

Q. On this Monday evening meeting when Mr. Huddleson talked with you men at the warehouse, just go over that conversation again as you remember it and tell us what was said, as you recall it.

A. The first thing was said was that he said,

(Testimony of George Rose.)

"Well, fellows, I understand you have joined the union. I see a lot of you have your buttons on." Then he went on to explain that due to competitive conditions in the canning industry, why he didn't see how he was going to pay 62½ cents while the other canneries in the state weren't paying it.

Q. Up to that point did any of the men say anything, make a response or suggestion to the statement he made about the competitive situation? [258]

A. Not up to then, no.

Q. What else was said?

A. And then he talked about the contractor. He said he would get a contractor; if we went out one door he would get a contractor to come in the other door; that he hadn't been sleeping, or something to that effect.

Q. Did he say he had been talking with a contractor and that the contractor could do it for less money than he was paying at the time?

A. Yes.

Q. He said that?

A. Yes.

Q. Did any of the men say anything about that to him?

A. I don't believe they did, not to my knowledge.

Q. What else was said? He told you that he couldn't pay the scale of 62½ cents while the other members of the canning industry were paying less?

A. Right.

Q. Did he tell you that if the others all paid

(Testimony of George Rose.)

the same scale that he would pay whatever scale they did?

A. Right.

Q. Did anybody say anything about that, any of the men, or anybody there?

A. One of the fellows said, "Why don't you start paying it and the rest of them will fall in?"

[259]

Q. What did he say to that?

A. He said he'd be damned if he was going to be made the goat.

Q. Did anybody say anything to that?

A. I don't recollect.

Q. Didn't he say something about you thinking it over for a day or two and letting him know what you were going to do about it?

A. I believe so.

Q. Did anybody let him know what you were going to do about it before the Wednesday meeting?

A. No.

Q. Did you go and see him, or did anybody else go and see him?

A. No, I don't think so.

Q. Did anybody else—was there anything else said by him that you recall?

A. That is about all.

Q. Do you know how many employes there were in the cannery itself about that time, that is, the first part of August?

A. No, I haven't any idea how many there was.

Q. Several hundred?

A. You mean in the plant?

(Testimony of George Rose.)

Q. Yes. [260]

A. There were several hundred.

Q. You don't know just how many there were?

A. No.

Q. You wouldn't know whether there were 1200, whether 1200 was a high or a low figure?

A. I wouldn't have any idea at all.

Mr. St. Sure: That is all.

Trial Examiner Traynor: Any further questions?

Redirect Examination

Q. (By Mr. Edises) Have you related the substance of the remarks of Mr. Huddleson at that meeting on Monday?

A. Have I related the substance?

Q. The substance of it.

A. You mean just the high points?

Q. Yes.

A. Yes.

Q. Did he say a great deal more along those lines?

A. Well, he did, which I cannot recall. It lasted about 20 or 25 minutes.

Q. What was the purpose of the meeting which was to be held on Wednesday night, the union meeting?

A. Well, of course that would be only my opinion.

Q. It was for initiation, wasn't it?

A. The meeting at the hall?

Q. Yes, at the hall. [261]

(Testimony of George Rose.)

A. Yes, for initiation into the unioon.

Q. What did you understand that time that Mr. Huddleson wanted you to think over?

Mr. St. Sure: I think the conversation is all that we are entitled to know, and not his understanding of it.

Mr. Edises: I submit——

Mr. St. Sure: (Interrupting) You can ask him what Mr. Huddleson told him to think over, but as to his understanding of it, I take it that is a conclusion.

Mr. Edises: My only object in bringing that out is that it is possible to relate the conversation, and at the same time not convey the actual effect of that statement.

Trial Examiner Traynor: I think your last question calls for a conclusion of the witness and that you should confine your questions to what was said at the meeting.

Q. (By Mr. Edises) In Mr. Huddleson's remarks did he make it clear that as far as he was concerned, your belonging to the union meant demanding 62½ cents per hour?

Mr. St. Sure: My objection to that is two-fold:

First, it calls for a conclusion of the witness; and second, it is leading and suggestive.

He can ask for the conversation. It has been related twice. But to ask if Mr. Huddleson made such and such a thing clear, it is certainly a con-

(Testimony of George Rose.)

clusion of the witness, and I object to the question on that ground. [262]

Trial Examiner Traynor: Yes. Objection sustained.

Q. (By Mr. Edises) When you left that meeting on Monday night, rather, that discussion by Mr. Huddleson, what did you understand was your status?

Mr. St. Sure: I object to that as incompetent and immaterial, and certainly calling for his conclusion. Further, I take it that the conversation is the thing that is in interest here, if it is of interest.

Mr. Kagel: I am here representing the union. I am not an attorney, and do not know the fine points of law. My understanding of the law is that we are not supposed to follow the exact rules of evidence, and I frankly object to the continuous objections. My understanding of the proceeding here is that these men are supposed to place the facts, as they understand them, before the Examiner, and these facts may go to certain conclusions that these men had.

After all, we are dealing with something that motivated these men to take certain action, and with reference to certain action taken by their employer, and it seems to me that the Examiner is entitled to know what they had in mind when they left that meeting, which is something you cannot get when you limit it only to the conversation.

Trial Examiner Traynor: I agree that the rules

(Testimony of George Rose.)

of evidence are not controlling. I do think, however, that they should be observed to a great extent. I think we have not [263] strictly followed the rules of evidence heretofore, but I do think that departures therefrom will be in the interest of getting a fair statement of the issues and the evidence thereon. I do think that calling for conclusions of the witness is not necessary to a clear presentation of the issues in the case.

Mr. Edises: Mr. Examiner, may I make this statement: I think that in this case it is extremely important that we understand just exactly what these men had in mind, and what their impression was of Mr. Huddleson's statements at that meeting on Monday. It is extremely important because what we are concerned about is the motives, in part, at least, which led to the various decisive features of this case.

Their motivation is important in that particular instance. The impression that these men had after that meeting, it seems to me, is directly in point.

Now, the bare recitation of what was said on each side does not convey that. It ought to be perfectly evident by now that those men sitting there, or standing around at that meeting not saying anything, were not at the same time devoid of thought. They certainly had certain reactions. Their boss was speaking to them, using strong language. They couldn't very well speak up and introduce a lot of statements which they perhaps had reason to believe would prejudice their standing. [264]

(Testimony of George Rose.)

We have got to find out what those men understood by that discussion, and we cannot get it in any other way than by asking, "What was your impression," or "What did you understand that Mr. Huddleson wanted you to do, or wanted to convey to you at that time?"

I submit that here is one occasion at least when it would be proper to observe that provision of the law which provides that the rules of evidence are not controlling. I admit that in a larger part of the case it is a rule of wisdom to adhere reasonably close to the rules of evidence. But in an administrative hearing of this kind, there are occasions when one ought to depart from the strict rules of evidence, and my feeling is that this is such an occasion.

I seriously request the Examiner's permission to permit these men to state what their opinions were, what they had in mind, or what they understood at the termination of Mr. Huddleson's remarks.

Trial Examiner Traynor: Proceed with your questions, then, Mr. Edises. It is, I think, important to know what the men concluded.

Mr. Edises: Mr. Examiner, I have tried, as far as reasonable under the circumstances, not to get their conclusions, but I do feel in this case it is necessary. It is indicated by the fact that the men remained pretty silent, [265] and they had reason, I feel, for remaining silent during that meeting.

May I be permitted to put that question?

(Testimony of George Rose.)

Trial Examiner Traynor: Yes.

Q. (By Mr. Edises) Now, after that Monday meeting in which Mr. Huddleson spoke to you fellows, what did you understand your status to be, your position to be at that time?

A. Well, we had one alternative; that is all I can see.

Q. What was that?

A. Either throw our buttons away and go back to work, or else go out the door.

Mr. Edises: That is all.

Trial Examiner Traynor: Have you any questions, Mr. St. Sure?

Mr. St. Sure: I might have one question.

Recross Examination

Q. (By Mr. St. Sure) Did you discuss at all the possibility among yourselves of having some representatives of your group go to talk to Mr. Huddleson about the matter?

A. I don't know whether they did or not.

Q. You didn't, in any event?

A. I didn't, no.

Q. When did you first meet Mr. Woods?

A. I first met him at the meeting, the initiation meeting.

Q. On Wednesday evening? [266]

A. Yes.

Q. Did you know that before Wednesday a form of contract had been sent to Mr. Huddleson?

A. Before Wednesday?

(Testimony of George Rose.)

Q. Yes.

A. Mr. Huddleson told us about it at that meeting Monday night.

Q. That was the first you knew of it?

A. Yes.

Q. You had never seen, I take it, any form of proposed contract before you heard about it on Monday evening?

A. No.

Q. You didn't see it at all up to Wednesday evening?

A. I didn't see it then.

Q. Do you now know what that proposed contract contains?

A. I don't know what it contains, outside of the 62½ cents an hour, and eight hours a day.

Q. You don't know what else may have been in it?

A. No.

Mr. St. Sure: That is all.

Mr. Edises: That is all.

Trial Examiner Traynor: That is all.

(Witness excused.)

Mr. Edises: Mr. Hughes. [267]

RUFUS HUGHES,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Edises) What is your name?

A. Rufus Hughes.

Q. Where do you live?

A. 2393 Cherry Street, San Leandro.

Q. Are you married?

A. Yes.

Q. Any children?

A. No.

Q. Do you work for Santa Cruz or Stokely?

A. Santa Cruz.

Q. When did you go to work for them?

A. In April 1932, I believe.

Q. Were you ever shifted over to Stokely at any time?

A. I did work for Stokely's, yes.

Q. Did you receive the same pay check as you had received formerly, the same type of check?

A. The same type of check, but separate checks.

Q. Santa Cruz checks?

A. Santa Cruz, yes.

Q. What were your hours?

A. Well, usually—that depended a lot on the season. [268]

Q. During the month of July 1935, and the early part of August, what were your hours?

A. Well, from seven in the morning until what-

(Testimony of Rufus Hughes.)

ever time I finished, usually from 4:30 to 10 o'clock at night.

Q. And what was your job?

A. Printing; running the printing press.

Q. What did you print?

A. I branded the cases.

Q. Were you the one who printed the destinations on the cases?

A. I was, yes sir.

Q. Can you mention some of the foreign points of destination of goods from the labels which you printed on the cartons?

A. Yes.

Q. What are they?

A. London, Liverpool, Glasgow——

Mr. St. Sure: (Interrupting) Without admitting the materiality of that matter of the destination of merchandise, to save having a lot of this matter go into the record, I am willing to state there is no question but that the goods manufactured or canned by the Santa Cruz Company do reach purchasers in foreign countries, as well as in other states of this Union.

We don't admit the materiality of that in this proceeding; do not admit that the mere fact that that merchandise [269] does reach such destinations means the Santa Cruz Company is engaged in interstate commerce. However, for the sake of preventing merely cumulative matter in the record, it may be understood that there is no question that the

(Testimony of Rufus Hughes.)

merchandise does reach points in other states of the Union outside of California, as well as foreign countries.

Trial Examiner Traynor: That is one of the important issues in the case, whether interstate commerce was involved, and testimony as to the acts connected with transportation of the goods and the shipment of goods into the cannery and out of the cannery, I think are material to it.

Mr. St. Sure: I wasn't thinking of the acts themselves, but I was thinking merely of the listing of New York, Chicago, Philadelphia and so on, by each witness. I assume they would all give about the same answer as to the list of those places.

Mr. Edises: To save time can we stipulate to the fact, namely, that the goods were shipped to other states and foreign countries?

Mr. St. Sure: I will stipulate with you that all merchandise sold in the United States was sold f. o. b. under contract from Oakland, and the form of contract we previously furnished to the Labor Board; likewise that the shipments to out of country points were under a c. i. f. contract, the form of which has been submitted to the Labor Board—some [270] c. i. f. and some f. o. b. Oakland.

Those forms of contract, I assume you have. Beyond that the physical facts they may desire to develop concern the nature of those shipments, and how made, and the physical handling of them, of course, they may develop by testimony if they see fit.

(Testimony of Rufus Hughes.)

Mr. Edises: I would like to get a stipulation, if you are agreeable, similarly to the quantities. In other words, if you can give me an idea of about how much was shipped to foreign and out of state points, I think we can save a great deal of time.

Mr. St. Sure: I assume that information is available and can be obtained. A previous request was made for it, and a demand, prior to this hearing. We declined to give it without a statement being made as to the reason for the request which, I thought, we were entitled to have.

Any stipulation that I may make in this connection, as well as those that I have made, or offered to make at this time, are not to be deemed as any admission of materiality or of the effect that we are admitting that the Board has jurisdiction in all the things we first objected to. However, if it will facilitate the hearing, and without being taken as any waiver of objection or claim that we have made, I will endeavor to secure the quantities and the amounts that Mr. Edises has asked. [271]

Mr. Edises: If you will do that, I think it will save a good deal of time.

Mr. St. Sure: Likewise, at the same time I would like to be able to offer the form of contract which indicates, from a legal point of view, we feel, the manner in which these shipments were made.

Mr. Edises: I have the forms here. I was planning to introduce them a little later. But if you will have that information for me, I will not direct

(Testimony of Rufus Hughes.)

any further questions then to the points of shipment and quantities shipped.

Mr. St. Sure: I think it might be better to have it more accurate because, after all, I think these would be estimates from these men, and they could not be expected to accurately estimate them when they only handled a portion of the movement.

Mr. Edises: Granted.

Q. (By Mr. Edises) Were you present on Wednesday morning around 8:30 a. m. in the Santa Cruz warehouse when Mr. Anger had a conversation with Mr. Torenson?

A. I was.

Q. Did you hear the conversation?

A. I did.

Q. Where were you standing at the time with reference to these other two?

A. Standing by the printing press. [272]

Q. And how far away from Mr. Anger and Mr. Torenson?

A. Well, not over a couple or three feet.

Q. And what was said in that conversation?

A. Well, Bob asked Stan if the boys could have permission to go to the meeting that night. He told him the boys wanted permission to go to the union meeting that night to be initiated.

Q. And what did Stan say to that?

A. He said, "O. K., Bob, I will arrange it."

Q. Anything further said that you now recall?

(Testimony of Rufus Hughes.)

A. No, I don't remember anything else, not right then.

Q. Were you present at any other time during that day when Mr. Anger spoke to Mr. Torenson?

A. I was.

Q. What time was that?

A. It was sometime in the afternoon; I imagine around 2:30 or 3 o'clock.

Q. Did that take place at the same place in the warehouse?

A. Yes sir.

Q. And what was said in that conversation?

A. Bob told Stan he had heard rumors around that anybody attending that meeting that night would be fired, would lose their job.

Q. Yes.

A. And Stan said he hadn't heard anything about it; he [273] hadn't given any such orders as that.

Q. What else was said, as far as you can now remember?

A. And he said that Huddleson hadn't told him to issue any orders to that effect.

Q. Anything further said?

A. Not that I remember.

Q. Did you go—what time did you knock off on Wednesday?

A. 4:30.

Q. How did you go about the process of checking out?

(Testimony of Rufus Hughes.)

A. I checked out any time when my work was finished.

Q. Was your work finished that day at 4:30?

A. Yes.

Q. Did you ordinarily have to get Mr. Torenson's O. K. before you could check out when your work was finished?

A. No.

Q. Were you present at the discussion on Monday when Mr. Huddleson spoke to the men?

A. Yes sir.

Q. Were you wearing your union button?

A. Yes sir.

Q. Do you remember what Mr. Huddleson said? Before we get to that, how did you learn about that meeting?

A. The meeting on Wednesday night?

Q. No, I am speaking now of the Monday meeting, around 6 o'clock, when Mr. Huddleson spoke to the men. [274]

A. Mr. Torenson told me.

Q. What did he say to you?

A. Well, he told me, says, "Stick around for a few minutes before you go to work because Huddleson is coming out and giving you boys a talk."

Q. What was said and done at that meeting when Huddleson spoke to you?

A. He got all the fellows together and told them he understood they had joined the union, and he wanted to know what their idea was, what they expected to gain by it.

(Testimony of Rufus Hughes.)

Q. What else?

A. No one would answer him, so he says he understood that the union scale was 62½ cents an hour. He said, "Do you fellows expect to get that from here?"

Then he went on to say that he couldn't afford to pay 62½ cents an hour, if that was the scale that the union demanded, because there were 57 other canneries in California that didn't belong to the union and were only paying from 35 cents to 40 cents an hour, and that he couldn't pay more than they did and stay in business.

He said besides that he wouldn't have anybody from the outside telling him how to run his business; that he was perfectly capable of running it himself.

Q. Did he say anything else that you now remember?

A. Well, he made quite a speech, but I don't remember all [275] of the things he said, except he said he would give us a couple of days to think it over as to what we were going to do about it.

Q. What did he want you to think over?

A. Whether we were going through with the idea of being in the union, or come back to work for what we were getting then.

Q. Did you speak to Mr. Huddleson at any time Wednesday?

A. No.

Q. Do you know Mr. Gomez?

A. When I see him, is all.

(Testimony of Rufus Hughes.)

Q. When did you first see him around the Santa Cruz plant?

A. On Monday, I believe.

Q. And where was he at the time?

A. Just walking around in the warehouse.

Q. Did you see anybody else?

A. You mean any one I didn't know?

Q. Yes.

A. Strangers—yes, I saw some Chinamen.

Q. When was that?

A. The day before the lockout.

Q. Was that Wednesday?

A. On Wednesday, yes.

Q. What time did you see them?

A. When I first noticed the Chinamen it was about 3 o'clock [276] in the afternoon, I believe.

Q. On Wednesday?

A. Yes.

Q. Do you remember how many you saw?

A. There were only a couple, the ones I saw.

Q. Where did you see them?

A. Standing by the office; that is, the warehouse office.

Q. With Mr. Gomez?

A. With Mr. Gomez.

Q. Who did the hiring and firing at the Santa Cruz plant?

A. I really don't know. I think the superintendent was supposed to, but still Mr. Torenson, if he needed some one right away, he would hire them.

Q. Who did you take your orders from?

(Testimony of Rufus Hughes.)

A. Torenson and Ernie Reich.

Q. Did you show up for work Thursday morning?

A. I did.

Q. What did you find?

A. I found all the doors locked, and all the fellows standing outside.

Q. Did you try to get in?

A. I did.

Q. What happened?

A. I was told to stay out.

Q. How did you go about trying to get in? [277]

A. First I parked my machine there where I usually parked it and I was told I couldn't park it there.

Q. Who told you that?

A. One of the watchmen.

Q. Do you remember just what was said?

A. He said, "You can't park your car here today."

I asked him why, and he said he didn't know; that it was just orders from headquarters to keep the place clear there.

Q. Did you serve on the picket line?

A. I did.

Q. Did you ever commit any acts of violence?

A. No.

Q. Did you ever receive any instructions from the union ordering you to use any violence or intimidation of any kind?

A. No.

(Testimony of Rufus Hughes.)

Q. Would you take your job back if offered to you?

A. Yes sir.

Mr. Edises: No further questions.

Trial Examiner Traynor: We will take a five minute recess.

(At this point a recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Traynor: You may proceed with your cross examination, Mr. St. Sure. [278]

Mr. St. Sure: I have no questions.

Trial Examiner Traynor: That is all.

(Witness excused.)

Mr. Edises: Mr. Dolin.

LUTHER DOLIN,

called as a witness by the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Edises) What is your name?

A. Luther Dolin.

Q. Where do you live?

A. 947 Watkins, Hayward.

Q. Are you married?

A. Right.

Q. Any children?

A. No.

(Testimony of Luther Dolin.)

Q. How long did you work for Stokely, or did you work for Stokely?

A. Yes.

Q. How long?

A. About three or four months.

Q. What was your job there?

A. I was stacking cases at the time of the lock-out.

Q. Were you ever shifted around from Stokely to Santa Cruz? [279]

A. I was, and that was a part of my work. We were working piece work. We unloaded some box cars and loaded others, piece work.

Q. During the month of July and the early part of August, what were your hours at Stokely?

A. We worked all hours; sometimes when we finished what we had to stack in the day, we went home; other times after we finished the piece work, we worked hour work, running from 2 o'clock, I imagine, to 7 or 8 o'clock.

Q. Was there any particular time when you were more likely to get off than any other time?

A. No, there was no certain time.

Q. Did you know Mr. Gomez?

A. By sight.

Q. When did you first see him around the Santa Cruz plant?

A. On August 5th, on Monday.

Q. And what was he doing then?

A. We were stacking cases right close to the door that leads to 57th Avenue.

(Testimony of Luther Dolin.)

Q. Where?

A. To 57th Avenue. The door faces 57th Avenue. I noticed this fellow standing there at the door, at the desk, and I presume he was talking to Mannie Frates—that is the straw boss there— and I just noticed him there and didn't know who he was a the time. [280]

Q. When did you find out who he was?

A. On Tuesday, the following day.

Q. And how did you learn that?

A. Well, we were through and was waiting for George Rose to bring in some more cases to be stacked, and I noticed the fellow standing at the door. He had been walking around the warehouse and I asked Stan Morris who he was. I thought he was some big shot from Indiana, and I asked—

Q. (Interrupting) Why did you think he was a big shot from Indiana?

A. I understood they had big warehouses out there, Stokely did, and he was looking around, watching the fellows work, and I asked Stan Morris who he was. He said it was Gomez.

Q. What else was said?

A. That was all that was said then.

Q. Did you have any further conversation with Mr. Morris about Gomez?

A. On Wednesday I was speaking about Gomez. He spoke to me, rather, when we were waiting for the cases, because we were pretty well caught up with the fellow on the jitney.

Q. About what time was this?

(Testimony of Luther Dolin.)

A. I couldn't say the exact time. I know it was on the day before the lockout. Stan Morris asked me if I had my button. Prior to that he asked me three or four times if I still had my union button.

[281]

Q. How did he happen to mention that?

A. I don't know . . . He just asked.

Q. Were you wearing a button?

A. No, I didn't have a button then. I asked him about it, and he said, "Well, you are playing safe that way."

Q. What?

A. He said, "You are playing safe that way." So I asked him, "What do you mean?"

He told me that if I wanted to continue stacking cases, I had to see Gomez.

Q. Can you place the time of that conversation as close as you can remember?

A. I think it was around in the morning sometime.

Q. On what day?

A. On Wednesday.

Q. Now, when did you apply for membership in the union?

A. I asked about it after the lockout.

Q. After the lockout? You hadn't belonged previous?

A. No.

Q. You are not one of the complainants in this case?

A. Pardon?

(Testimony of Luther Dolin.)

Q. You are not one of the complainants in this case?

A. Well, I had got into the union all right, but I was—Thursday when I wanted to go back to work, that is when they told me that there was no work. [282]

Q. Who told you there was no work?

A. It was Mr. Gomez himself.

Q. What time was this?

A. Thursday morning, on the day of the lock-out.

Q. Was this early in the morning?

A. Yes, it was about a quarter of six, I imagine.

Q. Well, how did you happen to get to see Gomez?

A. Every day I had to count the cases we had to stack, and I walked around the cafeteria there, just about a quarter after six, and we walked into the cafeteria and from there I went into the warehouse to count the cases, and before I had gone in the men's rest room, and as I was going out, Gomez himself stopped me. I didn't know it was Gomez then, except from the day before. He had on some kind of a jacket, and I didn't recognize him as the man who had been over to Stokely's.

He said, "Have you got your button with you?"

I said, "Yes." And I pulled out my Santa Cruz button—it is a little brass button.

Q. Was that a union button?

A. No.

(Testimony of Luther Dolin.)

Q. What kind was it?

A. A registration button.

Q. Means of identification?

A. Yes. So I thought he referred to that. I didn't know [283] who he was. I pulled the button out and showed it to him.

He said, "Where are you going?"

I said, "To count the cases."

He said, "O. K."

So I walked into the warehouse. Just as I got to the warehouse, I noticed a bunch of Chinamen and a colored fellow working on the pork and bean machines, labeling machine, and I wondered what the score was. Then Mr. Gomez himself walked up to me.

Q. Who?

A. Gomez. He said, "What do you want here?"

I told him, "Nothing. I work here."

He says, "No, you don't. I got my own crew."

And so I just took it for granted he knew what he was talking about, so I walked out again.

As I got outside I met George, one of the watchmen.

Q. Who is that?

A. George, the watchman. I asked what was going on in there, and he said, "Well, I don't know." He said the fellows were told to be kept out of there today.

I said, "Why the guards?"

"I was told to watch that the fellows didn't get into trouble," he said.

(Testimony of Luther Dolin.)

And then I met some of the boys and we started talking, and then that is when they told me about it. [284]

Q. Did George say who told him the fellows were to be kept out?

A. He said it was orders from the boss. So I took it for granted he meant Mr. Huddleson.

Q. Will you take your job back if it is offered to you?

A. I would.

Mr. Edises: That is all.

Cross Examination.

Q. (By Mr. St. Sure) Who was your immediate superior? I mean, who did you take orders from in working in the Stokely warehouse?

A. Most from Mannie Frates. He received his from his boss, Stan Morris.

Q. Did you ever go and see Mr. Morris, or anybody else, to inquire about going back to work?

A. No, I just seen them on the day, on the same day I was talking to George.

Q. That was on Thursday?

A. On Thursday morning, right. He was standing at the doorway laughing.

Q. Morris?

A. Yes.

Q. What did you say to him, and what did he say to you on that occasion?

A. He was standing there grinning, that is all. [285]

(Testimony of Luther Dolin.)

Q. Did you talk to him?

A. He didn't say anything.

Q. Did you ask him about getting your job back, or anything of that kind?

A. No, because he told me about the contract the day before.

Q. You haven't since that time talked with any one out there concerning getting your job back?

A. I have not.

Mr. St. Sure: That is all.

(Witness excused.)

Mr. Edises: John Valin.

JOHN VALIN,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Edises) Are you married, Mr. Valin?

A. I am.

Q. Have you any children?

A. One.

Q. How old?

A. 3½ years.

Q. Where do you live?

A. Hayward, 635 Dean Street.

Q. Did you work at the Stokely plant or the Santa Cruz warehouse?

A. Stokely. [286]

(Testimony of John Valin.)

Q. Were you shifted around from one warehouse to the other?

A. I was.

Q. And how was that determined?

A. Well, sometimes Stokely was busy and I worked in the Stokely warehouse; and sometimes Santa Cruz was busy and I would go over there while Stokely was slack.

Q. Who did you take orders from at the Santa Cruz warehouse?

A. Ernie Reich and Torenson.

Q. And at Stokely's?

A. Stan Morris and Mannie Frates.

Q. What kind of work did you do?

A. Catching, labeling machine, loading cars, box cars and trucks.

Q. Were you changed around from one job to another indiscriminately?

A. I was.

Q. And did loading one day, stacking the next, and so on?

A. Yes.

Q. Was that likewise true of the other men in the warehouse?

A. Yes sir.

Q. Who did you receive your pay check from?

A. Santa Cruz. [287]

Q. Likewise, while you were working for Stokely?

A. Yes.

(Testimony of John Valin.)

Q. And that check had the name of the Santa Cruz Fruit Packing Company on it in both cases?

A. It did.

Q. When did you apply for membership in the union?

A. On Wednesday, August 7.

Q. Were you initiated that night?

A. Yes.

Q. You had spoken to Mr. Anger previously?

A. Yes.

Q. And asked about joining?

A. Yes.

Q. When did you get your button?

A. On Monday, Monday noon.

Q. Who gave it to you?

A. Bob.

Q. Did you know that Mr. Woods was the business manager of the union?

A. I did.

Q. What was your object in joining the union?

A. Better conditions and hours.

Q. Did you have any specific ideas in mind, any specific demands? What was your idea on the subject of wages?

A. 62½ cents an hour. [288]

Q. You say 62½ cents an hour. Where did you get that idea? Did Mr. Anger mention it to you?

A. He did.

Q. Was that at the time you first spoke to him about joining the union?

A. Yes.

(Testimony of John Valin.)

Mr. St. Sure: Might I suggest, after all, that if the witness doesn't answer a direct question, that Mr. Edises should not then ask, "Did Mr. So and So speak to you about it?" I do not want to be technical in my objections, but I do object to questions when the answers are obviously suggested by the questions.

Mr. Edises: I likewise do not want to be technical, but you will understand——

Mr. St. Sure: (Interrupting) Then let's put it on a basis of fairness and not technically. Let's get at the facts, and I have no objection to you going about it in your own way, but I think when you ask the witness where he got the idea, and then he doesn't answer, and then you suggest, "Did Mr. So and So mention it to you?" that it is not a fair way to proceed, regardless of whether it is technically correct or not. And that is my objection.

Mr. Edises: I am anxious to be fair, Mr. St. Sure.

Mr. St. Sure: I know you are.

Mr. Edises: I don't want to ask any questions, I don't [289] want to pry into his mind and——

Mr. St. Sure: (Interrupting) That is why I make the suggestion that you desist from the practice you are following.

Mr. Edises: I have reason to believe, from my prior conversation with this man, and others, that certain facts are so. These persons are inexperienced as witnesses, and when they get up on the

(Testimony of John Valin.)

witness stand they become a bit frightened, and their memories don't function so well, and I have always understood it is permissible, under such circumstances, to lead them.

Mr. St. Sure: I don't know what there is to be frightened about. Neither the reporter, the Examiner, myself or you have been fierce so far.

Mr. Edises: I realize that, but these men are not accustomed to testifying on the witness stand.

Mr. St. Sure: I urge my objection and stand upon it.

Trial Examiner Traynor: Will you try to frame your questions a little bit differently, Mr. Edises?

Mr. Edises: Surely.

Q. (By Mr. Edises) Were you present at the meeting on Monday around 6 o'clock, when Mr. Huddleson spoke to the men?

A. I was.

Q. And who told you about the meeting?

A. Stan Morris came over and told me. [290]

Q. What was said at that time?

A. We were loading the box car, and Stan came over about 5:30 and told me, he says, "Well, you boys had better make your minds up by 6 o'clock."

And I said to Stan, "What do you mean by making our minds up?"

So he came back with a fat fellow. I don't know his name. He is a buyer. And the fat fellow said, "You four fellows go up and talk to Huddleson."

I said, "Why the four of us?"

(Testimony of John Valin.)

Then he said, "Wait until the Santa Cruz gang get back from supper and Mr. Huddleson will have a speech with you boys."

That is what we did.

Q. Was that all that was said at that time?

A. Yes.

Q. Did you go to that meeting?

A. I did.

Q. And were you wearing your union button?

A. I was.

Q. Do you remember what was said at that meeting?

A. Well, Mr. Huddleson said that he couldn't pay 62½ cents an hour; that before he would pay it, he would be in a wooden kimono.

Q. What did he say about the union? [291]

A. Well, he said the union was a good thing, but he said he couldn't pay it unless the other 57 canneries did; that he wouldn't want to be made the goat.

Q. Did Mr. Huddleson say anything at the end of his talk to you about leaving with you any proposition of any kind?

A. I don't know.

Q. Were you paying close attention to what was said at the meeting?

A. I was, but I don't remember.

Q. Now, when Mr. Morris told you men that you were to make up your minds by 6 o'clock, was any one else present besides you and Mr. Morris?

(Testimony of John Valin.)

A. A lot of the boys were around there working.

Q. Do you remember any of them?

A. I don't know who was around. I can't think of the names of who was around. They were working back and forth.

Q. How about Mr. Fields?

A. Mr. Fields and Bud Ellis was there, I imagine.

Q. Do you know Mr. Gomez?

A. I didn't at the time, no.

Q. Do you know him now?

A. I do.

Q. By sight?

A. By sight.

Q. Did you ever see him around the plant before Wednesday, [292] August 7th?

A. Seen him Monday.

Q. Where did you see him?

A. Talking to Mannie Frates and Stan Morris, right across from the catching machine.

Q. At the Stokely warehouse?

A. Yes.

Q. Did you hear the conversation?

A. I didn't.

Q. When did you see him again?

A. I saw him on Wednesday.

Q. You didn't see him on Tuesday?

A. No.

Q. Where did you see him on Wednesday?

A. Going across to the Stokely warehouse from the Santa Cruz.

(Testimony of John Valin.)

Q. About what time?

A. About 9:30.

Q. Wednesday morning?

A. Yes.

Q. What time did you quit on Wednesday?

A. 4:30 when I was through.

Q. You were through with your work?

A. Through with my work.

Q. Who told you you could leave? [293]

A. Nobody. I was just through with my job.

Q. Was that the way you ordinarily quit?

A. Yes, when I was through with my work I would check out and go home.

Q. No special time?

A. No special time.

Q. Did you go to the meeting that night?

A. I did.

Q. When did you first learn there was to be a meeting that night?

A. From Bob Anger.

Q. When did he tell you?

A. I think it was on Tuesday sometime; sometime around Tuesday.

Q. Do you remember what was said?

A. I don't.

Q. Will you take your job back if it is offered to you?

A. Yes.

Q. What is that?

A. Yes.

Mr. Edises: That is all.

(Testimony of John Valin.)

Cross-Examination

Q. (By Mr. St. Sure) You say you would take your job back if offered to you. Would you work with men who were not members of the union? [294]

A. I don't know what you mean.

Q. Well, I mean, assuming that you went back to work in the warehouse, would you work in the warehouse where there were men employed who did not belong to the union that you belonged to?

A. I wouldn't.

Q. Pardon?

A. I wouldn't.

Q. You would not?

A. No.

Mr. St. Sure: That is all.

(Witness excused.)

Mr. Edises: May we have a recess for a couple of minutes?

Trial Examiner Traynor: Yes.

(At this point a recess was taken, after which proceedings were resumed as follows:)

Mr. Edises: Ivo Rocha.

IVO ROCHA,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Edises) Your name is what?

A. Ivo Rocha.

Q. Are you married?

A. Yes. [295]

Q. Any children?

A. Yes, I have a boy.

Q. What?

A. I have a boy.

Q. How old?

A. 16 months old.

Q. Do you work for Santa Cruz or Stokely?

A. Santa Cruz.

Q. What was your work there?

A. Just general warehouse work.

Q. What are some of the things you did?

A. I did a lot of shipping and receiving and general warehouse work.

Q. Were you moved around from one job to another as you were needed?

A. I was. Most of the time I was at the sealing machine.

Q. Who was your boss?

A. Torenson and Ernie Reich.

Q. When did you first go to work for Santa Cruz?

A. First, about two weeks after the start of that plant.

Q. About when was that?

(Testimony of Ivo Rocha.)

A. I guess that was close to three years ago, I believe.

Q. When?

A. Close to about three years ago, I believe.

Q. Were you present on Monday, August 5, when, around [296] 6:30 or 6 o'clock, Mr. Huddleson spoke to a group of men?

A. Yes, I was.

Q. Who told you about that meeting?

A. Mr. Torenson did.

Q. And what did he say, do you remember?

A. He said, after we came back from supper, that Mr. Huddleson wanted to speak to a group of the boys, all of them.

Q. Were you wearing your union button at that time?

A. Yes, I was.

Q. Who had given you that button?

A. Bob Anger.

Q. Now, as closely as you can recall, will you state what Mr. Huddleson said at that time?

A. His speech wasn't any too nice to be spoken, because he kind of cussed.

Trial Examiner Traynor: What did he say?

The Witness: He said he would be a son of a bitch if he would be the first one to pay the union scale out of all the canneries in the State of California; that he wasn't going to be any sucker.

Q. (By Mr. Edises) What else did he say?

A. Well, he said that before he ever did a thing like that, or pay, he would die with a wooden kimono on.

(Testimony of Ivo Rocha.)

Q. Do you remember anything else? [297]

A. I do remember that he said before he would do that he would have a contractor; that as we left one door, he would have a contractor come in the other door.

Q. What was your understanding as to his attitude toward the union?

A. Well, the way I understood it myself was that I don't believe he would care for any union at all; he didn't want to have a union there at all.

Q. Did he say that?

A. That was my attitude from the way he spoke about it.

Q. What time did you quit on Wednesday night?

A. 4:30.

Q. Was that your usual quitting time?

A. We worked about 78 hours. In the busy season we never did know when we would get through. We would go to work at seven in the morning, and get off, maybe at 4:30 or 10 o'clock at night.

Q. How did you happen to quit at 4:30 on Wednesday?

A. I don't remember that now. I don't remember whether it was because there wasn't much to do, or whether—I don't recall.

Q. Well, you knew there was to be a meeting, initiation meeting that night, didn't you?

A. Yes, I did.

Q. Who told you about that? [298]

A. Mr. Bob Anger did.

(Testimony of Ivo Rocha.)

Q. When did he tell you?

A. He told me a couple of times. He told me something about it in the morning, and in the afternoon, too.

Q. The first time he spoke do you remember what he said?

A. He told me personally that he was going to ask Mr. Torenson to let us fellows off at 4:30 that evening for the purpose of going to that meeting.

Q. Was anything else said then?

A. And then later on he came back and told me he had already asked Torenson and he said he was glad he had told him about the meeting as that gave him a chance to arrange to put other men on the labeling machine.

Q. Did you go to the meeting that night?

A. I did.

Q. Did you show up for work the next morning?

A. Yes, I did.

Q. What did you find there?

A. I found a watchman out there. I don't recall who I rode to work with, but he told us to move the car up ahead; that there was going to be trouble there.

Q. When you showed up for work the next morning—withdraw that. When you showed up at the plant the next morning did you intend to go to work?

A. Most naturally I did. [299]

Q. Did you have any knowledge before that that you would not be permitted to go to work?

(Testimony of Ivo Rocha.)

A. No, I didn't.

Q. Did you try to get in?

A. Did I try to get in?

Q. That morning, Thursday morning.

A. No, because after the watchman told me there was going to be trouble, and we wasn't going to work that morning, I thought it best to stay out and wait for the rest of the fellows to come up.

Q. Do you remember what watchman that was?

A. I believe I do.

Q. Who was it?

A. I think it was George. There are two of them by the name of George. It was a fat fellow. I will take that back. I am not sure of that. I don't want to be saying something I am not sure of it.

Q. It was one of the watchmen?

A. One of the watchmen.

Q. Did you do any picket duty?

A. Yes, I did.

Q. Did you have any conversations, or hear any conversations between any of the company officials and any of the men on the picket line?

A. I didn't get that. [300]

Q. Did you hear any of the men on the picket line talking to any of the company officials at any time?

A. No, I never.

Q. Did you commit any acts of violence on the picket line?

A. No, I never.

(Testimony of Ivo Rocha.)

Q. Did you ever threaten or intimidate, or try to intimidate any one?

A. No.

Q. Did you receive any instructions from the union in regard to violence or intimidation?

A. No, I never.

Q. Do you know personally of any instances in which any of the union men, in fact took any part in any act of violence or intimidation?

A. No.

Mr. Edises: That is all.

Cross-Examination

Q. (By Mr. St. Sure) Were there any men on the picket line except the men from Santa Cruz and the Stokely warehouses?

A. There were only Santa Cruz and Stokely men on the picket lines.

Q. No others there that you know on the picket line?

A. Not that I remember of.

Mr. Edises asked others whether or not they would accept their jobs back if offered. Would you? [301]

A. Yes, I would.

Q. Would you work in the warehouse if there were other employes there who were not members of your union?

A. Yes, I would.

Q. You would?

A. Yes.

(Testimony of Ivo Rocha.)

Q. Did you know about the contract submitted to Mr. Huddleson?

A. No, I didn't.

Q. Did you know that it contained a provision that all persons working in the warehouse would have to join the union or be discharged?

A. I don't get what you mean.

Q. Did you know that that contract contained a provision which said that all men who worked in the warehouse would have to join the union or be discharged by the management? Did you know that?

A. No.

Mr. Edises: The contract isn't in evidence and I don't know that that is the exact phraseology of it. If you want to offer it in evidence, we have it here and you can ask any questions based on it.

(Whereupon counsel Edises handed counsel St. Sure a copy of the contract referred to.)

Mr. St. Sure: I don't recall this contract. I would [302] like to check it with the one we have. Was there more than one submitted?

Mr. Edises: I don't believe there was. I believe that was the only one. I believe that your prior question, the question prior to this, Mr. St. Sure, in which you referred to a closed shop clause in the contract must have been an inadvertence on your part because I do not believe the contract contains any such provision.

Mr. St. Sure: The one I saw did. I will get that one. It might be better.

(Testimony of Ivo Rocha.)

Q. (By Mr. St. Sure) When did you first meet Mr. Woods?

A. When did I first meet Mr. Woods?

Q. Yes.

A. After we were locked out.

Trial Examiner Traynor: Speak louder.

The Witness: After we were locked out.

Q. (By Mr. St. Sure) Did you know that an agreement had been submitted to the management of the Santa Cruz Fruit Packing Company covering the requests of the union?

A. I don't remember, no.

Q. Pardon?

A. I don't recall that, no.

Q. Did you ever see a copy of any agreement that was submitted to the management of the Santa Cruz Fruit Packing Company? [303]

A. No, I never did.

Q. Were you ever present at a meeting where the terms of any such agreement were discussed?

A. I don't remember.

Q. Did you ever have explained to you, by Mr. Woods or any one else, what the terms of any contract would be that would be submitted to the Santa Cruz management?

A. I don't remember.

Q. Do you know what demands, if any, were to be made in your behalf by Mr. Woods or any one else?

A. I didn't get what you said.

(Testimony of Ivo Rocha.)

Q. Do you know what demands, if any, were to be made in your behalf for you by Mr. Woods or anybody else? Did you ever discuss or hear what demands were to be made?

A. No.

Q. To this day do you know what demands were made?

A. Afterwards I did.

Q. Pardon?

A. Afterwards I did.

Q. What did you learn afterwards?

A. What do you mean, for the betterment?

Q. What did you learn afterwards concerning any demands that were made on the management?

A. I learned that the warehouse scale was 62½ cents; I learned that. [304]

Q. Yes. Anything else?

A. And shorter hours. We wouldn't have to work 14 or 15 hours any more unless we got overtime for it.

Q. Yes. Anything else that you learned or heard discussed about any contract or proposed agreement?

A. No, I don't remember.

Mr. St. Sure: I think that is all.

Redirect Examination.

Q. (By Mr. Edises) What were you chiefly interested in? What demands were you chiefly concerned about, or what working conditions, when you joined the union?

A. Better pay for less hours.

(Testimony of Ivo Rocha.)

Q. Hours and wages, is that correct?

A. Hours and wages.

Q. You knew that the demands were going to be made in connection with hours and wages, didn't you, or did you?

A. Most naturally I—

Q. (Interrupting) Let me phrase the question differently. You joined the union because you were interested in getting better hours and wages, didn't you?

A. Yes, I did.

Q. Then didn't you know that demands were going to be made by the union on the management?

A. Well, I did know the demands were going to be made, but I didn't know when. [305]

Q. Did you know that the union was going to ask the same rates and working conditions that other union warehouses, warehousemen were getting?

A. I am not sure of that.

Q. Did you know what the union rate was?

A. Did I know what the union rate was?

Q. Yes.

A. Yes, I did.

Q. Was it your understanding that the union was going to ask the same rates for yourselves?

A. Well, not only that, but I figured it would help anyway. I wasn't sure we would get it all at the present time, but I felt we would get more than we were getting; that it would be more of a 50-50 proposition.

(Testimony of E. G. Resburg.)

Mr. Edises: That is all.

Mr. St. Sure: No other questions.

(Witness excused.)

Mr. Edises: Mr. Resburg.

E. G. RESBURG,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Edises) What is your name?

A. Ed Resburg.

Q. Where do you live? [306]

A. 8815 D Street, Oakland.

Q. Are you married?

A. Yes.

Q. Any children?

A. No.

Q. Expecting any?

A. (Laughter) I am.

Mr. St. Sure: I cannot see the materiality of such testimony. I will stipulate that I am married and have two children; that my associate, Mr. Moore, is unmarried and has no children.

I cannot see what purpose such questions serve.

Mr. Edises: It is perfectly proper.

Mr. St. Sure: May I inquire, are you married, and have you any children?

Mr. Edises: I am married, but I haven't any children.

(Testimony of E. G. Resburg.)

Mr. St. Sure: I am, and have two children.

Mr. Kagel, are you married?

Mr. Kagel: Yes, but no children.

Mr. St. Sure: And Mr. Moore is unmarried and has no children.

I did not mean, Mr. Examiner, to inject something that might not be proper.

Q. (By Mr. Edises) Did you work for Santa Cruz or the Stokely warehouse? [307]

A. I was employed by Santa Cruz.

Q. When did you first go to work there?

A. It was in April of 1932, the first year he was in Oakland.

Q. Did you work there continuously from that time on?

A. I was there practically steady.

Q. And what sort of work did you do?

A. All of it—my main job was running an automatic sealer we had there.

Q. Were you changed around from one job to another?

A. I was.

Q. Did you do any loading?

A. Yes.

Q. When did you first hear about the union at the plant?

A. The latter part of July.

Q. Latter part of July?

A. Yes.

Q. Who told you about it?

A. Bob Anger.

(Testimony of E. G. Resburg.)

Q. Did you apply for membership in the union?

A. I did.

Q. At that time?

A. At that time, or shortly afterwards.

Q. When did you first get your union button?

A. On Monday, August 5th. [308]

Q. Were you present on Monday, around 6 o'clock, when Mr. Huddleson spoke to a group of the warehousemen?

A. I was.

Q. How did you hear about the meeting?

A. Stan Torenson told us.

Q. What did he say at the time?

A. He said Huddleson, the old man, wanted to talk to all the bunch of us out there.

Q. Were you wearing your button at the meeting?

A. I was.

Q. Now, as closely as you can recall, will you tell us what was said and done at that time?

A. Well, him and his son came out there and they were standing there talking, and he said that he understood that we had joined the union and that our demands would be 62½ cents an hour and a 40-hour week; but he said 62½ cents an hour had never been paid in the cannery and he didn't see why the hell he should start it. He also made the remark that—

Q. (Interrupting) Are you afraid of using strong language?

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(Testimony of E. G. Resburg.)

A. No, I forgot. I didn't know how to phrase this one thing he said.

Q. Tell us what he said.

A. Well, he said he didn't see why the hell we should [309] pick on him to start with when there were 57 other canneries in the State of California; that if we organized the rest of them he would be willing to pay $1 an hour, that he didn't give a damn how much he paid so long as the rest paid it.

Q. Do you remember anything else he said?

A. Well, I asked him why he didn't start paying 62½ cents an hour, and that the others would follow.

And he said, "What the hell would I get if I paid 62½ cents an hour and the rest paid 35 and 40 cents—what a good screwing I would get."

Q. Do you remember anything further that was said by anybody?

A. Then I asked—one of the other boys asked him, or said, that he had heard he had been sent an agreement and he said—well, I don't remember his answer to that question, to that remark.

Then he asked us, said, "Why didn't you come up and talk to me?"

One of the boys said we probably would have got fired.

Then he said, "I have always treated you fellows fair, haven't I? Haven't you worked around the plant long enough to know I ain't going to bite you?"

(Testimony of E. G. Resburg.)

Q. Do you remember anything else that he said about the union?

A. Well, he told us right at the start, he said he didn't [310] have anything against the union; that he belonged to one for about fifteen years himself; and that he be damned if he would have a union in his cannery.

Q. What else?

A. That is about all I can recollect right now.

Q. Did you see Mr. Gomez around the plant prior to Wednesday, August 7?

A. I couldn't swear to it that I did.

Q. What time did you quit on Wednesday?

A. 4:30.

Q. How did you happen to do that?

A. Well, Mr. Anger told us we were going to get off at 4:30 to go to a union meeting.

Q. When did Anger tell you that?

A. He told me first about, around 10 o'clock in the morning; and I saw him talking to Stan Torenson, and as soon as I got my work—as soon as my work slacked down, I asked him what Stan said.

Q. You say you saw him standing talking to Stan Torenson?

A. Yes.

Q. Go ahead.

A. And he said, "We are going to quit at 4:30." I said, "Was it O. K. with Stan?"

And he said, "Yes, he said we could get off at 4:30."

(Testimony of E. G. Resburg.)

Then he walked around past me and he said, "Ed, we are [311] going to check out at 4:30."

And then I asked again if it was O. K. with Stan, and he said yes it was; that Stan said we could get off without any trouble.

Q. Do you remember hearing any rumor going around the plant that day that the men would be canned if they went to the meeting that night?

A. I did not.

Q. Did you go to the meeting that night?

A. Yes.

Q. Did you show up for work the next morning?

A. Yes.

Q. Did you intend to go to work?

A. I intended to go to work.

Q. You didn't intend to strike or anything, did you?

A. No.

Q. What did you find when you got there?

A. I found all the doors locked.

Q. Did you try to get in?

A. I went to one door, the door we usually go in, and it was locked. I saw the watchman and said, "How come the door is locked?"

He said, "It is orders from the front end to keep the doors locked."

Then I said, "Won't you let us park the car here?" [312]

He said, "No. The old man is going to hold a foot race here pretty soon."

(Testimony of E. G. Resburg.)

Q. Did you do picket duty?

A. I did, yes.

Q. Did you see any violence or direct action on the picket lines?

A. No.

Q. Did you get any orders or suggestions, advice or instructions from the union in that respect?

A. No.

Q. What were the union's orders, if you know, in regard to your conduct on the picket line?

A. Our orders were to go ahead with peaceful picketing and not start any violence. That was our orders to the picket men.

Q. Do you remember seeing Mr. Gomez on Tuesday or Wednesday?

A. I saw him on Wednesday.

Q. Where did you see him?

A. In the warehouse.

Q. What time?

A. I saw him first about, around 10 o'clock in the morning, and he was there all afternoon—on and off all afternoon.

Q. Did you see any one showing him around?

[313]

A. Yes.

Q. Who?

A. The assistant warehouse foreman at the time, Mr. Ledtke was one; and he was also in there with the superintendent, Joe Remington.

Q. Did you see any Chinese around?

A. I did.

(Testimony of E. G. Resburg.)

Q. What time did you see them?

A. It was around, I imagine, 3 o'clock in the afternoon.

Q. Who were they with?

A. Gomez.

Trial Examiner Traynor: We will recess until 2 o'clock.

Mr. Edises: That is all with this witness.

Mr. St. Sure: No questions.

(Witness excused.)

Mr. St. Sure: Before recess may I at this time formally move an adjournment until Thursday, January 2, 1936.

My reason for the motion, in the first place, is that it happens that this is the day before Christmas and some of us, perhaps all of us, would like to take advantage of this time in preparation for the holidays and to be with our families. I, for one, would like to have that time.

My reason for suggesting that we continue the matter during the holiday period, until the first business day [314] after the first of the New Year, is that aside from personal reasons, which do exist, the holiday period, so far as our courts are concerned, courts are adjourned except for matters of the greatest urgency and requiring immediate action.

I feel that all of us, if it is possible and if no hardship will come to any one by the continuance, feel that the continuance would be desirable.

I simply desire to point out that the complaint in this case was filed originally on the 2d of November, after having been before the Board for some period of time before that time. It was originally set down for hearing on the 9th of November. We requested at that time an extension of the five day period within which to file our answer, and it was denied us. Our answer was filed and we were prepared to go through with the hearing on the date set, the 9th of November, and there was no question asked concerning whether that suited the convenience of counsel or witnesses, or any one else.

We were advised by letter—in fact, I believe our client was advised by letter—that an amended complaint was being filed and that the matter would be continued until the—I want to get these dates right. It was first set for the 18th of November, and then continued, at the instance of the Board, to the 9th of December. We were prepared to proceed at that time, and Mr. Wagenet, the Regional Director, called me on the telephone and said, "We are not going on on [315] the 9th. It will go over two weeks."

And it was thereupon continued to this date. I don't mean to suggest or mislead any one in connection with what Mr. Wagenet said to me, but he said over the telephone—I understand the gentleman is in Washington and is no longer the Regional Director of the Board—"perhaps it won't go on at that time," because I called his attention

to the fact that that would be immediately before the Christmas holiday and would leave us on Christmas Eve trying this matter.

On Friday of last week I called the Regional Labor Board and talked to Mrs. Rossiter and I said, "Are you going on on Monday?"

She said, "Of course we are going on on Monday."

That was the beginning and end of the conversation in that connection.

There are matters which were set, as far as my own calendar is concerned, earlier than this. I had a Pension Board hearing set for Friday, December 27, involving the right of two widows of a policeman and a fireman, to obtain pensions. At their willingness, and at my request, and with the consent of the officials of the city, those matters were set over, although they did involve the actual payment of money to these people at a period when perhaps they are in need of it.

My thought is this: That if we do continue the hearing [316] on these days that there are only four days possibly in the interim that would be lost; the day after Christmas, the 27th, which is Friday, and the Monday and Tuesday immediately preceding New Year's Day.

Now, if it is the desire of counsel and the Examiner that we do go through and work on Christmas Eve and the afternoon preceding Christmas, and that we turn over those four business days and work also on the evening before New Year's, be-

fore that holiday, I assume there is nothing that we can do but acquiesce, or stay away from the proceeding, which I prefer not to do.

We have made certain offers to stipulate here, which I will renew, and which I think will materially shorten the proceedings. I have in mind particularly the matter of the quantities and the percentages of shipments, and so on, the places to which they were consigned, and the places where the purchasers received them.

In so far as the examination of the factual witnesses we have heard so far, I think the cross examination has perhaps been briefer than was anticipated. As far as I am concerned, the major portion of this material, which comes in upon the same basis, is cumulative, and I am not going to cross examine witnesses who are testifying, as these men are, to the same facts which have previously been testified to by others, except in so far as there is a difference in [317] the testimony that we would like to examine into.

I do not feel that the entire matter which, I heard estimated, would require some two weeks to hear, even with the continuance, will take the full two weeks to hear. I think we should be able to conclude the matter in one or two days following that adjournment.

I have given all of these reasons, none of which I take it are basic grounds for a continuance, and I will state frankly that my reason for the request, primarily, is personal. But I do feel that we would —even though the Board does object to the matter being continued at this time—appreciate a break,

and if we could have a break perhaps it would facilitate the matter, because during the interval I can undertake to have figures prepared. They haven't been prepared. And even should we work through, they will be available, I take it, no sooner than if we didn't have the continuance. I do not make that as a threat that we will withhold them, but I will get them as quickly as I can. I just do not feel that anything will be accomplished by going through over the holiday period that would compensate for the personal inconvenience to all of us, including witnesses, counsel, and every one else.

Unless there is some matter of major importance which would indicate the matter must be determined at the earliest possible moment I urge that the matter go over. [318]

I will say further that I do not feel that the Board, in saying it opposes a continuance at this time, is in a very good position to take that arbitrary stand, because they have previously twice continued the matter over a period of more than a month without consulting or even requesting a consultation concerning the convenience of any others.

I move that we go over until the 2d of January.

Mr. Edises: I want to state that I do not feel that Mr. St. Sure's request for an adjournment at this time is, in essence, unreasonable. I am aware of the fact that this is the holiday season in the courts, and if this were an ordinary civil case, there would hardly be any question as to an adjournment.

It is hardly necessary for me to state, of course, that this is not an ordinary civil case. And while I do not propose at this time to enter into an explanation of the former postponements, nor to assign blame in regard to them, but the fact does remain that the acts that we are here concerned with, this lockout, as we have termed it—and the walkout, as the Respondent maintains—did occur as far back as August, and that quite apart from the matter of who is responsible for the fact that it has not come to hearing until now, it is true that these men have been out of their jobs since that time, and we ought to do everything reasonably necessary to expedite it.

[319]

I wired the Board in Washington and indicated that counsel for the Respondent desired a postponement at this time, and I have just received the following reply:

"Retel Board opposed adjournment Santa Cruz Wednesday through New Year (stop) large questions of policy and program involved this particular case which make completion administrative hearing more important.

(Signed) National Labor Relations Board."

I do want to state, however, that my expectations in regard to this case, at least certain aspects of it, have not materialized. We have gone much more rapidly than I had anticipated. The objections have been relatively few, and we have made considerable progress. I would be willing to state that we are several days ahead of where I expected that we would be, basing my opinion on my experience with the case just prior to this one.

Trial Examiner Traynor: I think we are probably several days ahead in this case over what the Board has anticipated.

Mr. Edises: That is probably so. In other words, the Board, which was daily receiving the transcript of the Mackay Radio and Telegraph Company case, had before it a record which was replete with the objections of all kinds and questions as to the admissibility of evidence, indicating an effort on the part of counsel to confine the matter to strict technical rules of evidence and to build up a record. That [320] hasn't happened in this case, and we have made progress.

The matter of policy of course still remains.

I presume that the Trial Examiner would have power to grant such a request, but before doing so I would like to have an opportunity to speak to the men, and to their union representatives, and see what their feeling is in the matter.

I suggest that we postpone the decision in this matter until this afternoon's session.

Trial Examiner Traynor: I think Mr. St. Sure's motion is that we adjourn now and not come back.

Mr. St. Sure: Yes.

Trial Examiner Traynor: Do you see any necessity for all this going into the record?

Mr. Edises: Yes, let it go in.

Mr. St. Sure: I do not object to it.

Mr. Edises: I see no objection.

Mr. St. Sure: The reason that I suggested that we adjourn now, is because it has become the custom, whether good, bad or indifferent, for the pro-

fessional offices on this side of the Bay to shut down at noon on the day preceding Christmas. My own offices are going to be closed, and the people will go home and about their affairs. I would like to do the same thing. That is the reason I suggested closing now.

If you desire that we come back here at 2 o'clock and [321] consider the matter at that time, why of course I will have to be here at that time.

Mr. Kagel: I can speak for the union. So far as the union is concerned, we voice objection to any postponement of the matter. This situation is very serious to this particular union, also serious to other unions in this particular region, that may become involved under this particular Act.

The matter goes back to August 7th of this year, and we are now approaching the New Year and we are just beginning to make progress in this hearing.

I realize that the decision is in the hands of the Examiner, but so far as the union is concerned, speaking officially as their representative in this particular matter, we desire the record to show that we are opposed to any postponement.

Trial Examiner Traynor: Anything further?

Mr. Edises: I have nothing further to add, Mr. Examiner. I do believe that the rules and regulations do set forth your powers in this respect.

Mr. St. Sure: Yes, under Section 29 of the Rules:

"In the discretion of the Trial Examiner, the hearing may be continued from day to day, or adjourned to a later date, or to a different place, by announcement thereof at the hearing by the Trial Examiner, or by other appropriate notice." [322]

I think the power does exist.

Trial Examiner Traynor: This is a very difficult decision to make, because it would be a personal inconvenience to me to hold the hearing during this period, and yet in view of the telegram from the National Board, stating its views as to the urgency and importance of the matter, and weighing them against personal reasons of counsel, and my own, I am of the opinion we must continue the hearing through the holidays, with the exception of Christmas and possibly Friday and Saturday.

I regret having to make that decision.

We will recess until 2 o'clock this afternoon.

(Thereupon, at 12:15 o'clock p. m., a recess was taken until 2:00 o'clock p. m.)

After Recess

(The hearing was resumed at 2:00 o'clock p. m., pursuant to the taking of recess.)

Trial Examiner Traynor: Are you ready to proceed?

Mr. St. Sure: Yes. I have no questions of the last witness.

Mr. Edises: Mr. Woods.

E. C. WOODS,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Edises) What is your name? [323]

A. E. C. Woods.

Q. And your address?

A. 2535 Humboldt, Oakland.

Q. Calling your attention to the summer of 1935, specifically the months of July and August, were you at that time connected in any official capacity with the Weighers, Warehousemen and Cereal Workers Local 38-44, I. L. A.?

A. I was.

Q. What was your capacity?

A. I was business agent, acting as president.

Q. What was the nature of your duties and authority, and so on, as business agent?

A. My duties as a business agent for the Local was to carry out instructions from the Local, to negotiate as the Local seen fit for me to do.

Q. Can you enlarge on your duties in connection with these negotiations that you refer to?

A. Well, my duties were to negotiate agreements with the employer. Of course those agreements had to be taken back to the union for ratification.

Q. Will you explain the process of ratification of an agreement, just how it was done, what was required?

(Testimony of E. C. Woods.)

A. When an agreement was reached between the business agent, the best that he could do, it was taken back to the union, either at a special meeting or a regular meeting, and they [324] voted on that agreement to see whether they would accept it or not.

Q. Did you, or any other official of the union, have power to enter into a binding agreement without such a vote of the men?

A. No sir.

Q. Prior to the recent lockout in this case, had the union organized any other cannery warehouses around the Bay region?

A. Yes sir.

Q. Which ones?

A. Rosenberg.

Q. Where is that?

A. It is at 14th Street; they call it the 14th Street Terminal.

Q. Is that in Oakland?

A. Yes sir.

Q. Any others?

A. Libby, McNeil and Libby.

Q. Where is that?

A. Same place; just across the street. They are just across the street from one another.

Q. Any others?

A. Del Monte.

Q. Is that the California Packing Company?

A. That is the California Packing Company, yes.

[325]

(Testimony of E. C. Woods.)

Q. And where is that located?

A. That is at Encinal Terminal, the best that I can describe it.

Q. Alameda?

A. Isn't it Richmond—right across the Bay here?

Q. Alameda.

A. Yes.

Q. Do you know what wage scale Rosenberg pays the cannery warehousemen?

A. 72½ cents an hour.

Q. Do you know whether the work which is done by the cannery warehousemen at Rosenberg's is the same in substance as the work done at the Santa Cruz and Stokely warehouses?

A. It is trucking, and I would say it would be the same.

Q. What is the wage scale at Libby's?

A. 72½ cents an hour.

Q. By the way, what percentage of the warehousemen at Rosenberg's are organized, belong to the union?

A. All of them.

Q. 100 per cent?

A. Yes sir.

Q. How about at Libby's?

A. Same thing.

Q. How about Del Monte, what percentage of the men there belong to the union? [326]

A. I would say 40.

(Testimony of E. C. Woods.)

Q. 40 per cent?

A. Yes—50 per cent, something like that.

Q. What is the position of Local 38-44 with reference to the Pacific Coast District of the I. L. A., particularly with reference to your powers of independent action?

A. Any local has its own right to take—I suppose you are speaking of strike action, aren't you, or individual action?

Q. Let me put it specifically: In the first place, do the officers of Local 38-44 have power to call the men out on strike without a vote of the men?

A. They do—to call them out without a vote of the men?

Q. Yes, without a vote of the men.

A. No, not without a vote of the men.

Q. Is it necessary to get the consent or permission of the Pacific District, or the International of I. L. A. before 38-44 can vote to go out on strike?

A. No sir, it isn't. We don't have to get permission. The only time that you get permission from the District is when you expect their assistance.

Q. And what do you mean by that?

A. In other words, for them to back you up in whatever action you take.

Q. If, for example, you were going to call a strike [327] confined exclusively to one warehouse, say the Santa Cruz plant, would it ordinarily be necessary to get the permission of the District or the International?

A. It would not.

(Testimony of E. C. Woods.)

Q. Would you ordinarily, when you are striking in one plant, get their consent or permission?

A. No sir.

Q. What was the first connection you had as business agent of 38-44 with the organization of the Santa Cruz warehouse, or Stokely?

A. Do you mean the first time I was approached on it?

Q. The first time you had anything to do with it.

A. Well, I don't recall the first date.

Q. Approximately.

A. I would say that it was somewhere near the 15th, somewhere after the 15th, the 15th or after anyway, of July.

Q. 1935?

A. Of 1935. I was at the hall on 7th and Market, here in Oakland at noon. I remember very distinctly that it was at noon. I was approached by Bob Anger. He asked me if Local 38-44 would accept that warehouse, from the Santa Cruz Fruit Packing Company, into the Local.

I told him that they would accept them, providing that the men came in 100 per cent and paid up their initiation fees before they were initiated. [328]

Q. Did you then give him application blanks?

A. No, I did not.

Q. What was the next step in the organization?

A. I told him to go back and find out how many wanted to go into the union. He did so, and within the next few days—I don't recall just when—I gave him the application blanks to fill out.

(Testimony of E. C. Woods.)

Q. Now, of the year-round employes at the Santa Cruz and Stokely warehouses, how many of those men signed up, or indicated their intention to join the union?

A. Every one of them.

Q. Prior to the lockout?

A. Yes.

Q. Did you have any discussion—by the way, did you have your dealings with Mr. Anger as representative of the men, or who did you deal with?

A. Mr. Anger.

Q. Anybody else?

A. No sir.

Q. Chiefly Mr. Anger?

A. Mr. Anger.

Q. Did you and Mr. Anger ever talk over a proposed agreement, or proposed demands?

A. We have, if I may explain it in this way, an agreement already signed up with the other warehouses. [329]

Q. The ones you mentioned?

A. The Haslett Warehouses—and the agreement we have already signed up, I had taken Mr. Anger one of those agreements that we had already signed up with the warehouses here in Oakland and San Francisco, which was calling for 62½ cents an hour. That is the only thing.

Q. You say—pardon me; I didn't mean to interrupt you.

A. I had taken him this agreement and told him to look it over. I gave it to him at their plant one day at noon.

(Testimony of E. C. Woods.)

Q. Do you remember about when that was?

A. No, I do not.

Q. Did the men at any meeting, or Mr. Anger and yourself, ever discuss striking at the Santa Cruz or Stokely plants?

A. No sir.

Q. The subject of a strike never came up in connection with that organization?

A. It did not.

Q. When did you first have any contact with any company officials?

A. I recall it was on Tuesday, the 6th.

Q. What was the nature of that contact?

A. I went to the plant at noon to see how things were going along. The boys informed me that Mr. Huddleson had informed them on Monday that they could either go with him or the union, or something similar to that; that he didn't [330] want no union activities, or something like that, in his plant.

I don't recall just what they told me, but it was something to that effect.

I went in to see Mr. Huddleson, and Mr. Huddleson informed me of the same thing: That they didn't want nothing to do with the union, or any of its officials.

Q. And can you relate, as closely as you can remember, the actual discussion that you had at that time with Mr. Huddleson? You entered his office, and then what was said?

A. I went in——

(Testimony of E. C. Woods.)

Q. (Interrupting) By the way, what did you go to see him about?

A. I went in to see him in regard to what he had told the men on Monday night; that it seemed that he had informed them that they was to either go with the union or go with him.

Q. Well, you went in to the office. Tell us just exactly what happened, as closely as you can remember, just what was said.

A. I went into the office and I asked the girl there at the desk if I could see Mr. Huddleson. So I had to wait around there a few minutes, and he came in and I went into his private office there with him.

I asked him if it was true, that is, that the men [331] would have to give up the union if they stayed in the plant.

And he said, "Well, what do you think?"

And I said, "I don't know. I came in to find out. I don't want these men to lose their jobs."

So he told me, informed me, that he could not have and would not have any union activities around his place; that it would cost him too much money; that although he had been a union man, he said that canneries was no place for a union; that you couldn't have a union in a cannery; that the hours wouldn't permit it, and the wages wouldn't permit it. Therefore he didn't want any union in his plant; that if we wanted to organize we could go some place else and organize.

(Testimony of E. C. Woods.)

Q. Was anything said about contracting the work out?

A. He told me that if we were going to come in there and organize, that he was going to let it out on contract. I asked him if he would give me the name of the one he was going to contract it out to, give me the name of the contractor, and he said I would find that out soon enough.

Q. What did you want the name of the contractor for?

A. I wanted the name of the contractor so that if he was going to contract it out, that I could go and talk to the contractor and see if I couldn't make arrangements with the contractor for the men.

Q. Well, was anything further said that you can now remember? [332]

A. Yes. I think that he said that he was very busy and as far as I was only there on union activities, or union business, that so long as he didn't want to have nothing to do with the union, he didn't see that he had any more business with me and I had better go along and peddle my papers.

Q. Did you do that?

A. I did.

Q. Now, did you have any further contact with any company official prior to the time of the lockout?

A. Before the lockout?

Q. Before the lockout, yes.

A. No, I did not.

(Testimony of E. C. Woods.)

Q. Did you attend the initiation meeting Wednesday night?

A. I did.

Q. And what was—did you have any discussions with any of the men in regard to their having gotten off from work?

A. Well, I went to 7th and Market, to the hall there. I got there a little early, and quite a few of the men were around there on the street waiting for me to come. When I got there they all seemed to be very happy and very cheerful, and they told me that they had gotten permission from the boss to come down to the meeting that night, and that the boss knew about it, and that the night men were supposed to go back to work as soon as the meeting was over; and that [333] they would like to get the meeting over as soon as possible so they wouldn't delay any, or cause him to lose any time.

I said, "Well, it is all right then for the men to come off this afternoon?"

And they said, "Yes," that everything was fine; that they had permission to come off that afternoon to come to the meeting, and that they were to go back to work the next morning.

Q. What time was the meeting over that night?

A. I would say 9:30 or quarter to ten.

Q. Now, did you go to the Santa Cruz plant—strike that. When did you first hear that the men had not been permitted to return to work?

A. Well, the next morning I got to the office rather early and——

(Testimony of E. C. Woods.)

Q. (Interrupting) Which office?

A. The office in San Francisco, 85 Clay Street—and there was a telephone call there for me to come to the Santa Cruz plant just as quick as I could. So I didn't take any pains for anything else, but I jumped in the car and rushed over here as soon as I could.

When I got over here, why all the men was out in the street, and they told me that they had been locked out.

Q. Do you remember what time you got here?

A. Must have been around 8:30; not later than 9 o'clock. [334]

Q. Now go ahead.

A. And so I said, "Well, did something happen? What happened?"

And they said they didn't know, only that some of the men, some of the night men came and they wouldn't let them in, and that when the men came the next morning, they wouldn't let them in.

I said, "Who is working in there?"

They said they had seen some negroes and some Chinamen.

So I said: "Well, I will go up and see Mr. Huddleson."

And so I started down there and I was stopped.

Q. Where did you go?

A. I started down to the plant. I was stopped by a guard. I explained to the guard who I was, and so he let me through. I tried all the doors and

(Testimony of E. C. Woods.)

knocked on the doors, and nobobdy wouldn't answer them, and that was all the way down.

So I went to the extreme end of the plant. There is a cafeteria there. I couldn't even get in the office, so I went to the cafeteria. I told the guard there on the door—one of the pickets had explained to me that Manuel Gomez had contracted it before —and so I wanted to see Mr. Huddelson.

They informed me that Mr. Huddleson wasn't in. So I asked the guard then if I could see Mr. Manuel Gomez, and he said, "Yes."

He, the guard, seemed to be rather green on his job, [335] because he had taken me down through the plant. I went all the way through the plant, all the way through the warehouse, plumb on to the other end of the warehouse, and there we found Manuel Gomez.

And so I asked Manuel why that he was leaving our men out on the street. I said, "These men have been working here." I said, "What is the trouble that you are leaving them out on the street?"

He said, "Because they belong to the union." He said he didn't want to have anything to do with any of that mess; that he had seen enough of it already and he wasn't going to have any messes up around where he was; and that the union, if they wanted to organize, they could go somewhere else.

Q. Did you see any of his men around?

A. The warehouse had plenty of men in it. He said he had his own crew, and that he had brought them there with him; that he knew that this was going on for some time.

(Testimony of E. C. Woods.)

Q. Well, what did you do then?

A. Well, I tried to explain to him that it would be more valuable for him to put the men back that was experienced in the plant there.

Then some large, kind of a fat fellow—I suppose he would weigh around 300 pounds—he came up to me and he had a gas gun and explained it was a gas gun. The way it looked, it had a barrel like a one-pounder, like a sawed off shot gun. [336] He had that kind of under his arm, and he had a billy club in his hip pocket. And another man came up from behind me and he said something. I knew there was somebody behind me. And this guard that brought me down, he was there with me also.

The big fat fellow, I don't know what his name was, he told me if I wanted to walk out, I had better get going; otherwise they would carry me out.

Q. Did you follow his suggestion and walk out?

A. Very fast, yes.

Q. Did you make any subsequent efforts to see Mr. Huddleson?

A. After that?

Q. Yes.

A. I did.

Q. And when was that?

A. Well, it was—I don't recall just the date—it was the next couple of days after that. I thought that there might be some misunderstanding in the proposed agreement that he had received. I went in to see Mr. Huddleson.

(Testimony of E. C. Woods.)

I found Mr. Huddleson out in the street sitting on the running board of a car. I had asked Bob Anger to go in with me. Bob went in with me.

We found Mr. Huddleson sitting on the running board of a car. I asked Mr. Huddleson if there hadn't been something in that proposed agreement that he didn't understand. [337]

He said he understood it very thoroughly.

Then I told him that that was only a proposed agreement and that he could send us a revised proposal back and we would be glad to have it.

Q. Do you mean a counter-proposal?

A. A counter-proposal, I mean. And he said he wasn't interested in any proposals, or any of us; that the only time that he had anything to do with the union was when he didn't have his shoes on and when he didn't have his shoes on, he would be dead.

Q. Well, what did you do then? Was there anything further said?

A. There was nothing further to do but go away.

Q. Did you have any further interviews with Mr. Huddleson, or any official of the company, around that time?

A. I did.

Q. When was that?

A. Two or three days later. The business agent from the teamsters—I was thinking it over and I thought Mr. Huddleson might be hot and sore at the time—and so the business agent and myself went in to see him.

(Testimony of E. C. Woods.)

Q. Who was this business agent of the teamsters?

A. I don't recall his name now.

Q. Mr. Jackson?

A. Mr. Jackson, that is it. And we went in to see Mr. [338] Huddleson. He thought that maybe he could do something about it. We went in to see him and we found him practically in the same place, on the running board of a car, where I had seen him previously.

We asked him if there couldn't be some way that we could get the men back to work and negotiate the thing later.

He said, "What do you mean by negotiate?" He said, "If I would take those men back in," he said, "you would turn right around and I would have the same trouble over again, only I would have them in there and I would have to replace them again with other men." He said, "Now, I don't want nothing to do with the union. I have told you that. Now get out of here and leave me alone and tell them little playmates of yours out on the street, they had better get to hell away from my plant and stay away."

Q. Who were the playmates?

A. Meaning the pickets, the men that he had had under his employ.

Q. What did you do then?

A. I took his advice and went back.

Q. Did you have any further interviews with him?

(Testimony of E. C. Woods.)

A. Later on I thought maybe that it might be some good if I would take some one else.

Q. What were you trying to do in your repeated interviews with Mr. Huddleson, what were you trying to accomplish? [339]

A. The main thing was to use a friendly attitude, as we had always used with any company, to get the men back in, and try to negotiate some kind of an agreement for them.

Q. All right. Now tell us about this next interview. About when was it, can you estimate approximately when?

A. Well, he has a record of that and I think we have, too.

Q. Who was present at the next interview?

A. Mr. Harry Bridges, myself, and the same teamster delegate that was with me before.

Q. Mr. Bridges is president of Local 38-79?

A. He is.

Q. San Francisco Stevedores?

A. That is right.

Q. Have they any authority as to the affairs of your Local?

A. No sir.

Q. Mr. Bridges was along for what reason?

A. He was along—I was trying every way possible to get somebody that could reason with Mr. Huddleson. He didn't seem to be a man that I could reason with, and I was trying to get somebody, anybody that I could get, to reason with him.

Q. The stevedores had, at that time, declared the Santa Cruz cargo hot, had they not?

(Testimony of E. C. Woods.)

A. Yes sir.

Q. All right. Now tell us about this interview. Just a [340] minute. Who had it declared hot cargo, the stevedores, or 38-44?

A. 38-44.

Mr. Edises: I believe there exists a typewritten transcript of that interview. I am not sure in my own mind that it is necessary to introduce it in evidence, but it would be the best evidence.

Mr. St. Sure: You have a copy of it. Put it in evidence. I haven't a copy here. You have a copy. I will state that this copy of the transcript (indicating) of the conversation, was furnished through the Regional Labor Board by the Respondent. I have no objection to it begin introduced, reserving, as always, the objection to the jurisdiction and materiality, and other objections concerning the introduction of the evidence itself; but so far as questioning the foundation, we make no objection on that point.

Mr. Edises: Would it be stipulated that this is a stenographic transcript of the interview between Mr. Bridges, Mr. Woods, Mr. Huddleson on or about—

Do you know the date of that?

The Witness: I do not.

Mr. Edises: Do you know, Mr. St. Sure?

Mr. St. Sure: No, I do not.

Mr. Edises: Shortly after the lockout. I offer this in evidence as Board's Exhibit No. 2. [341]

Trial Examiner Traynor: Did you see it, Mr. St. Sure?

(Testimony of E. C. Woods.)

Mr. St. Sure: Yes, we furnished it to them.

Trial Examiner Traynor: It will be admitted as Board's Exhibit No. 2.

(The document referred to was received in evidence and marked Board's Exhibit No. 2, Witness Woods.)

Q. (By Mr. Edises) After the interview by Mr. Bridges and yourself with Mr. Huddleson, did you have any further dealings with Mr. Huddleson?

A. No sir.

Q. I show you a document headed "Agreement," and the preamble of which reads:

BOARD'S EXHIBIT No. 3.

"This Agreement, made and entered into this .....day of August, 1935, by and between Santa Cruz Packing Company and Stokely Bros. Inc., parties of the first part; and Weighers, Warehousemen & Cereal Workers' Local 38-44, I. L. A., party of the second part, Witnesseth —" and ask you if you can identify that?

A. (Examining document) That is a copy of the proposed agreement that we sent to Mr. Huddleson.

Q. Will you look over that agreement and state whether its terms are exactly the same as the proposed agreement sent Mr. Huddleson?

A. I see no changes.

Q. It is the same agreement, is not not? [342]

A. It is.

Mr. Edises: We offer that in evidence as Board's Exhibit No. 3.

(Testimony of E. C. Woods.)

Trial Examiner Traynor: Admitted as Board's Exhibit No. 3.

(The document referred to was received in evidence and marked Board's Exhibit No. 3, Witness Woods.)

Q. (By Mr. Edises) I show you a copy of what purports to be a letter of transmittal of a proposed contract, and ask you if that is the letter of transmittal that was sent along with the proposed agreement, to Mr. Huddleson?

A. (Examining letter) That is the letter that accompanied the agreement.

Mr. Edises: We offer that in evidence, and ask that it be made a part of Board's Exhibit No. 3.

Trial Examiner Traynor: That will be a part of Board's Exhibit No. 3.

Mr. Edises: On second thought, I think this letter of transmittal had better be Board's Exhibit No. 4.

Trial Examiner Traynor: All right. We will call it Board's Exhibit No. 4.

(The letter of transmittal referred to was received in evidence and marked Board's Exhibit No. 4, Witness Woods.) [343]

Q. (By Mr. Edises) I show you a carbon copy of a letter headed, "38-44, 85 Clay St., San Francisco, Calif., August 10, '35," addressed to "Santa Cruz Fruit Packing Company, 1175-57th Ave., Oakland, Calif., attention E. E. Huddleson," and with the name of E. C. Woods, Business Agent, typewritten at the end, and ask if that is a true and correct carbon copy of the letter sent by you?

A. (Examining copy of letter) It is.

(Testimony of E. C. Woods.)

Q. And I show you a document headed, "August 10, 1935," and reading: "The undersigned has received a letter addressed to San Cruz Fruit Packing Company, 1175-57th Ave., Oakland, Calif.," and signed "R. A. Williams," and ask if you can identify that?

A. (Examining document) Yes sir, that was delivered by a messenger boy, and that is the signature of the deliverer and the one who accepted it.

Q. Is that the receipt for the letter dated August 10, 1935?

A. That is right.

Mr. Edises: I offer these two papers in evidence as Board's Exhibit No. 5.

Have you any objection, Mr. St. Sure?

Mr. St. Sure: The same objection, as to its materiality and relevancy in this proceeding, the jurisdiction, and so forth; as to the foundation, no, I have no objection to it [344] upon that ground.

Trial Examiner Traynor: It may be received as Board's Exhibit No. 5.

(The two documents referred to were received in evidence and marked Board's Exhibit No. 5, Witness Woods.)

Q. (By Mr. Edises) Showing you Board's Exhibit No. 3, how was that agreement prepared?

A. You mean how did we prepare it?

Q. How did you go about preparing it?

A. This agreement was taken from an agreement that we have already made and signed.

(Testimony of E. C. Woods.)

Q. With other warehouses?

A. With other warehouses.

Q. In the Bay region?

A. Yes. For instance, with Haslett, because Haslett happens to be the chairman of all the warehouses and Haslett signed the agreement for the warehouses. We had taken the Haslett Warehouse agreement, as we call it, and taken this agreement and sent it to them.

Q. And the terms and condition and demands contained in this agreement are the same as those contained in your own agreement with warehouses around the Bay Region?

A. They are.

Mr. Edises: No further questions.

Mr. St. Sure: Before beginning my cross examination, [345] may this exhibit, Board's Exhibit No. 2, the transcript of this conversation, be deemed to have been entered in the record so we may refer to it without reading the entire transcript in at this time; that is, may it be considered as having been read, and copied into the record?

Trial Examiner Traynor: Yes.

Mr. St. Sure: I would like to refer to it without the necessity of going through the entire document.

Trial Examiner Traynor: It is so considered, and I will ask the reporter to incorporate it in the record at this point.

Mr. Edises: And if you intend to cross examine him in regard to matters contained in there, the witness will be given an opportunity to refer to it?

Mr. St. Sure: Surely.

(Testimony of E. C. Woods.)

BOARD'S EXHIBIT No. 2

is in the words and figures following, to-wit:

"Bridges: I guess we may as well get started.

"Woods: We came in here to find out if we couldn't see you this morning and see if we couldn't do something. We asked you at the Labor Relations Meeting about putting these men back to work and I thought you might have given it some consideration [346]

"E. E. Huddleson: I told you that we had no particular grievance with most of these boys out here, but some of these fellows conducted themselves in such a manner after they were out that I won't have them working for us.

"Woods: Yes, I know it.

"E. E. Huddleson: We have a Contract with this boy out here in the Warehouse and we aren't in a position to take it away from him. My thoughts are that you went about this whole thing in the wrong way.

"Woods: We didn't have any time to go about it at all. In fact, we had two days from the time we organized to the time we were locked out.

"E. E. Huddleson: There is still a question about this Lockout business.

"Bridges: It was a pure and simple lockout.

"E. E. Huddleson: That may be your interpretation of it, but that isn't mine. They said nothing about it and went, and there was only one thing for

(Testimony of E. C. Woods.)

me to do and I did it. I know what actually happened in regard to this supposed lockout story.

"Bridges: Nevertheless, they were locked out. Is it your [347] position that the Union men won't be allowed to work with you?

"E. E. Huddleson: It is my position that some of them won't come back.

"Bridges: We are going to have to find out what your position is.

"E. E. Huddleson: I am not in a position to put them back. I have a man under Contract who brought his own men in here. I have nothing against these fellows except those that conducted themselves in a very disorderly manner. While they were not working for us, some of them were raising hell about four o'clock in the morning.

"Bridges: Of course, we don't agree, however, we will let that go. Naturally, we are in this position—the Plant was organized and they were asked to join the Union. The notice was served on them that if they joined the Union they would be locked out.

"E. E. Huddleson: That is not so—who said they had any such notice served on them and who was supposed to have served it.

"Bridges: Well, I guess it wasn't in writing, but nevertheless, they were locked out.

"Woods: Several men came to me and they all told me the same [348] thing; that you came into the Plant and told them that if they wanted to work with you they could work with you, and that you would give them two days to make up their minds.

(Testimony of E. C. Woods.)

"E. E. Huddleson: The boys showed up with Union Buttons on and I went out to find out what it was all about. Nobody had said a word. I asked each one individually what it was all about, and finally I got a tall fellow that worked on the sealing machine to talk and he told me that they figured that they wanted to better their conditions and the Union had told them they could better their positions by joining the Union, and they told me about the conditions—62½¢ an hour, 48 hours a week, and double time for overtime, and the rest of the story. You can't expect me or anyone individual to pay considerable more than anybody else in the industry. That is ridiculous on the face of it. As far as bettering their conditions is concerned, I don't blame them, but you should know that we are not going to pay any more than the rest of the Industry is paying. I told them to go home and talk it over with their families and then tell me their decision. Nobody came back—I had to go to them. [349]

"Bridges: Were any official demands made on you?

"E. E. Huddleson: They told me they were going to get 62½¢ an hour.

"Bridges: As far as the Union is concerned, have they asked you for any change in conditions at all, or a raise in wages?

"E. E. Huddleson: Yes, I got that Agreement from the Union.

"Woods: You were to consider the Agreement. We didn't say you were bound to this Agreement.

(Testimony of E. C. Woods.)

"Woods: This agreement was sent in on Tuesday afternoon and they were locked out on Wednesday.

"Bridges: The only demand is that the men be reinstated without any discrimination and the Union representative be allowed to work out some agreement—it might be 62½¢ an hour and it might not be.

"E. E. Huddleson: We do our work in Santa Crúz under Contract just as several other Canners do. We contract all of our stacking here as well as trucking from the cooling porch to the stacks. 90% of the Canners in California contract their stacking. A good Can Stacker can stack four or times as much as our ordinary workman. We contract all of our Warehouse work at so much per case—taking down from the stacks, [350] loading and labeling up. I have had half a dozen men who asked me to contract the Warehouse. The Pacific Coast Canners decided not to operate this year and the Superintendent down there, who had been working for them for 10 years, was asking me if he couldn't contract the Warehouse, so this night I told the boys I had a chance to contract this Warehouse for a little less than it is costing me now, and that I couldn't afford to pay any more than anybody else. So, I told them to go back and talk it over with their families and they never did come back. That night they were supposed to work at 6 o'clock, and they left. The ones that were supposed to work from 6 p. m. to 2 a. m. said they would only work from 6 to 8—that

(Testimony of E. C. Woods.)

they were to go to a meeting at 8 o'clock, so I told them they were either going to work their full shift or not work at all. We told them that and then they left, so I immediately called this chap and made a contract with him and he got his crew that used to work for him and he put them to work.

"Bridges: Well, our job is to get the men back on the job; to try to have the men belong to the Union and work at the same time.

"E. E. Huddleson: I have no objection to them joining the Union. [351]

"Bridges: Except that you won't have them working for you.

"E. E. Huddleson: That isn't so—I carried a Union Card myself for fifteen years. I have no objection to anyone belonging to the Union. The only thing is that you can't ask anybody in any Industry to pay more money and work under different conditions than the rest of the people in the same industry—that is wrong.

"Bridges: That hasn't been done. At present the Union is making no demands along that line. The representative of the Union and the men are not asking you for a raise in wages or to shorten the hours—there is no demand at all—except the right of the men to belong to the Union, and they have that right.

"E. E. Huddleson: I have no objection to their belonging to the Union.

"Bridges: But you won't reinstate these men on the job?

(Testimony of E. C. Woods.)

"E. E. Huddleson: I am not in a position to do this. I have a Contract with a man to do the work and he has his own labor here.

"Bridges: Then there is nothing wrong with these men except that they joined the Union?

We are in this position—we believe our demands are reasonable, and I believe the whole Labor League [352] believes that, and it is up to us to see if we can't get the men back to work and still belong to the Union. We have gotten together on it and thought we would talk to you so that it wouldn't go too far and extend as far as it might. It can extend a long way, and we are just trying to avoid it.

"E. E. Huddleson: Why did you send that Contract out here if you didn't expect to make it stick?

"Bridges: We will withdraw it.

"Woods: It was a proposal—it states so in the letter.

"E. E. Huddleson: I can't take a Contract away from a man who has it and throw him out of the place—you can appreciate that.

"Bridges: You threw the other men out.

"E. E. Huddleson: They left their work and walked out—they were not locked out.

"Bridges: Did the men who took their places understand the conditions under which they were working under this Contract?

"Woods: You wouldn't tell me the man's name? You told me sometime ago that if we were figuring on organizing this place and if we went in there

(Testimony of E. C. Woods.)

with any demands, [353] that you were going to let the job out under Contract. You told me that in this office.

"E. E. Huddleson: It was only natural that I would contract the work when several people wanted it, at less money than it was costing me.

"Woods: Wednesday morning before the boys went down, they told your Foreman in the Plant that he contacted the Foreman about them going to the meeting and there wasn't any word given to those men that they were supposed to work at 6 o'clock and the Foreman told them to come back as soon as they got through with the meeting. The Foreman was supposed to have told five of the men that.

"E. E. Huddleson: They were told that they were expected to go to work at 6 o'clock and work their full shift.

"Woods: No. No. They were told they could go to the meeting and come back.

"E. E. Huddleson: I went to the men myself and talked to them and I know what they told me.

"Jackson: Don't you think it is okey with the proposed agreement to take these men back?

"E. E. Huddleson: [354] What will I do with the other men I have working here?

"Bridges: The other men came in under Strike conditions.

"E. E. Huddleson: This man had been after me for five or six weeks, before I gave the Contract to him.

(Testimony of E. C. Woods.)

"Bridges: Is that Contract for any definite period of time?

"E. E. Huddleson: The Contract is for twelve months.

"Jackson: Is it a verbal Contract, Mr. Huddleson?

"E. E. Huddleson: No.

"Jackson: I would like to find out who is handling this. Isn't it Mr. Jerome?

"E. E. Huddleson: I don't know Mr. Jerome.

"Woods: Manuel Gomez is the Contractor—isn't that right, Mr. Huddleson?

"Bridges: And you turned right around that night and called this man up and replaced all of the men this same night?

"E. E. Huddleson: I didn't replace them at all—they quit themselves.

"Bridges: We would just like to know—you still maintain your position that the men are not going to be re- [355] turned to their jobs?

"E. E. Huddleson: My position is that I now have a Contract for all Warehouse work.

"Bridges: We believe we have a good argument in the eyes of the Labor movement. A bunch of men joined the Union and through it left their jobs. You replaced these employees—we call them scabs—you call them employees, that replaced the men that walked out. Our job is to bring all of the resources we can get to help the labor situation, and we intend to do it. We thought we would lay the situation before you and see if we could get anywhere. It is evident that we can't do anything, so we may as well be on our way and see what else we can do.

(Testimony of E. C. Woods.)

"Woods: As these men have been working here for three years, they have much more claim on the jobs than the men that are here at present.

"E. E. Huddlson: If I hadn't contracted the work, that might be another story.

"Bridges: We still maintain our position—regardless of who has the Contract. The Contract won't hold water in this case. Opposition is very strong and we can enlist enough force to get the men back on the job, [356] although we have tried to avoid it. It has to be done to uphold the principle that they can join a Union and still get work. If it is your definite answer that the men are not going to be returned—not because of anything they have done on the job, but things in their own private lives, it is up to us to change it. You have a certain amount of men that exercised the right to join the Union.

"E. E. Huddleson: I think they made a serious mistake in the way they went about trying to better their condition.

"Bridges: We reserve the right to go about it any way we want. How should they have gone about it, if they did go about it in the wrong way?

"E. E. Huddleson: You tell me they didn't want 62½¢ an hour, and all of the other conditions asked for in the Contract you submitted. If they didn't want that, why didn't they ask for what they did want and not walk off the job, in which case I wouldn't have had to let a Contract in the first place.

(Testimony of E. C. Woods.)

"Bridges: As our proposal stated to you—and we don't have to tell you about Union activities, as you have belonged fifteen years—that is the only way to do it. They send out a proposed agreement and they expect a pro- [357] posal back from you as to what you can do. They expect to get a proposed agreement back from you. There was no notice served on you that if you didn't accept these demands they would walk out. Don't you think you could fix up some proposed agreement and give it back to us?

"Woods: The Union is making a formal request now that the men be reinstated.

"E. E. Huddleson: I now have my Warehouse under Contract.

"Woods: This contract seems to have been let for this purpose—to get rid of these men that walked out. You told me that if you had to go through with any agreement with them on Wednesday morning that you would let this work out under Contract. You told us there were certain men that wouldn't be reinstated because of something they had done outside of the job entirely.

"E. E. Huddleson: Let me ask you something, Mr. Bridges. If you had men that had been working for you steadily for years coming around and terrorizing your home in the middle of the night, would you take them back on the job? Just put yourself in my position for a moment. How would you feel about it?

(Testimony of E. C. Woods.)

"Bridges: Well, you are pretty well acquainted with the Police [358] Force, who have certain forces to take care of these things if we can't take care of them ourselves.

"E. E. Huddleson: I can take care of such things myself—unfortunately, however, I wasn't there—I was down here.

"Bridges: If I was an operator of a Plant and if my employees came around terrorizing me, I would say that that man wouldn't work for me any more and I would refer him to those particular forces.

"E. E. Huddleson: And it just so happens that I know who these particular men are.

"Bridges: All right, file charges with the Police against them. You are hiring men to produce eight hours' work. You are not hiring them to go good citizens on the outside; that is the Police force's job. It is their job to punish them and penalize them. It is not the job of the operator of the plant to say—you can't work here because of anything happening in their private life.

"E. E. Huddleson: Nobody is going to investigate it for me. I know who these men are. My wife knows every man in this organization by his first name, as she worked here. So, I am not guessing and the matter doesn't need [359] investigating. I know positively. I am not in a position to put the other men back in the Warehouse, because I am not going to tell this man that has a Contract with

(Testimony of E. C. Woods.)

me to go and let his men go, and take the others back in their places. I will take them back as I can work them in and as I see fit.

"Bridges: As a formal request, leaving the six men out who were disorderly, you won't agree to do it?

"E. E. Huddleson: I am not in a position to do it.

"Bridges: Well, that means "No?"

The other six men, regardless, are not going to get back because they made an attack on your home?

"E. E. Huddleson: They should be prosecuted.

"Bridges: Then, we will have the men arrested and you prosecute them. If these men attempted to attack anybody's homes, they can be identified, arrested, and punished, and we will certainly keep our hands out of it. That will dispose of the six men. However, you maintain that you are going to keep the punishing in your hands and they are not going to work here any more. In other words, you want them charged and sentenced without a trial or anything. Isn't that your position?

"E. E. Huddleson: No.

"Bridges: Who made the decision that these men can't work here? You did. The men are robbed of their living. They attacked your home and on that evidence you made this decision, and yet you say you wouldn't try the men and sentence them. I can't see your position. Turn them over to the people who are paid to do this sort of thing.

(Testimony of E. C. Woods.)

"Woods: It certainly wasn't authorized by the organization to do anything of that kind. We don't agree with any action of that kind and we don't want any of that kind. It seems as if you feel we must have put those men up to doing some of the things they did, but we haven't.

"E. E. Huddleson: If you see fit to misinterpret what I have told you, okey.

I told you I had a Contract and that there were only six men that I won't allow to work for me. No employee has any right to enter into anyone's personal rights but I am just a little particular about who works for me and I will hire any man I like better than someone else, and any time I can hire someone who has a family and takes care of it, I will hire [361] them in preference to someone who doesn't. I have the right to designate between the type of men who work for me, and I prefer to hire good citizens.

"Bridges: You have no right to judge whether a man is a good citizen or not.

"E. E. Huddleson: Most of these men I will put back to work. I can't put them back in a body because I have the work contracted. Most of them are good workers and I will put them back to work in the organization when I have an opportunity to do so.

"Bridges: You will get them all back to work—when? In a certain period of time—say, one week?

"E. E. Huddleson: I will have them all back when it is convenient to do so, except these six men.

(Testimony of E. C. Woods.)

"Bridges: The reason you don't want these six men is that they have been terrorizing people's homes?

"E. E. Huddleson: Yes, and rocking trucks, etc.

"Bridges: However, you won't agree to reinstate these men within a peroiod of one week, with the assistance of the Regional Labor Relations Board?

"E. E. Huddleson: How I employ the men that work for me is my business. [362]

"Bridges: How you run the men is our business. You would not agree to an arrangement? You claim you have a right to do these things and you think we haven't.

"E. E. Huddleson: Mr. Bridges, you are the type of fellow that would miscontrue any statement I make to you. I made a plain statement as to what I wanted to do, and I don't want to argue with you.

"Bridges: In that case, we have two opinions that conflict—there is only one way to settle that.

"E. E. Huddleson: I am not arbitrating my opinion.

"Bridges: I am expressing the men's opinions who are or were employees of this company, and under the law, still are, although they are standing outside. We can't agree what can be done with the men, but we are asking you if the men can be reinstated,—and a third party—an impartial party—would be asked to give us a decision on the matter.

"E. E. Huddleson: I don't want to argue.

"Bridges: I don't either.

"E. E. Huddleson: You got my statement and I will give you a written transcript of it, so let it lay there. [363]

(Testimony of E. C. Woods.)

"Jackson: Would you be willing to put this up to arbitration? That is, to keep out of all of this trouble ahead, or whatever might happen?

"E. E. Huddleson: What do you want to arbitrate, and on what basis?

"Jackson: We represent the men—you represent the Company—and an outsider—whatever ruling he makes, we will decide to arbitrate.

"E. E. Huddleson: I have nothing against the men whatsoever. I don't give a damn whether they belong to a Union or not—that is their business—but I want to know from the Union, after we arbitrate,—are they going to make any demands on me later on, that they are to receive more money from me under different working conditions than any other Canner in the Industry is paying?

"Bridges: This is the way it is handled. We give you a proposed agreement, you give us a counter agreement. You don't intend to accept that? They are organized for that reason and intend to fight it.

"E. E. Huddleson: I feel these fellows should have better conditions. I went back to Washington for the Canning Industry of California under the N. R. A. I am the only man [364] that argued shorter hours and 50¢ an hour minimum wage in the canning industry. I thought seven hours would be sufficient in the Canning Industry and a minimum wage of 50¢ an hour, and I said that if you had it in all industries—that the minimum wage would allow everyone about $3.50 to spend every

(Testimony of E. C. Woods.)

night, and if you did that, the conditions in this country would be made better. That is a matter of record.

"Bridges: The thing to do is to put it into practice.

"E. E. Huddleson: You can't expect one man to do it when the others are doing it for less.

"Bridges: However, there were no demands made on you—the situation rests. We can't get anywhere. Our request is that the men be reinstated on the job. Your position, as we get it, is that the men will be returned over a certain period of time—and that the six men would not be returned. We made a suggestion that a third party be brought into it and the differences straightened out.

"E. E. Huddleson: I want to know what demands are going to be made on us by the Union that these men belong to—I have no objection to them belonging to it—but I [365] want to know whether the Union is going to demand higher wages and shorter hours, etc., after we get them back, than the other Canneries are paying.

"Bridges: The question right now is to get the men back on the job.

"E. E. Huddleson: And let anything happen?

"Bridges: We believe there have been certain men discriminated against. We request that the men get back on the job.

"E. E. Huddleson: After you get them back in, are the demands going to be that we will have to pay a higher rate of wages than the other people

(Testimony of E. C. Woods.)

in this Industry? Is that going to be just the follow-up step?

"Bridges: We will try to get the best possible wages and best possible conditions for the men.

"E. E. Huddleson: In this Plant?

"Bridges: In this Plant and the other Plants.

"E. E. Huddleson: Are you going to call them out on strike, then, if we refuse to pay wages higher than other people in this Industry are paying?

"Bridges: Such things are not done because we tell them,—they are voted on by the men themselves. The present grievance is that the men are not on the job and have [366] a perfect right to be.

"E. E. Huddleson: If they come back at the same rate of pay, etc., are we going to be asked by the Union if these men are going to be called out on Strike later if we refuse to pay the same rate of pay etc., as the other Canners in the Inudustry?

"Bridges: What we want to know is—"Are the men going to be put back on the job?" The controversy now centers about certain men—not around hours and wages.

"E. E. Huddleson: I want to know under what conditions they are coming back and under what conditions they are going to stay.

"Bridges: We are asking that the men be reinstated under the same wages and conditions as when they left. After that is done, we can take up the question as to what the other demands are.

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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 536

SANTA CRUZ FRUIT PACKING COMPANY,
PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 28, 1937.

CERTIORARI GRANTED DECEMBER 6, 1937.

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